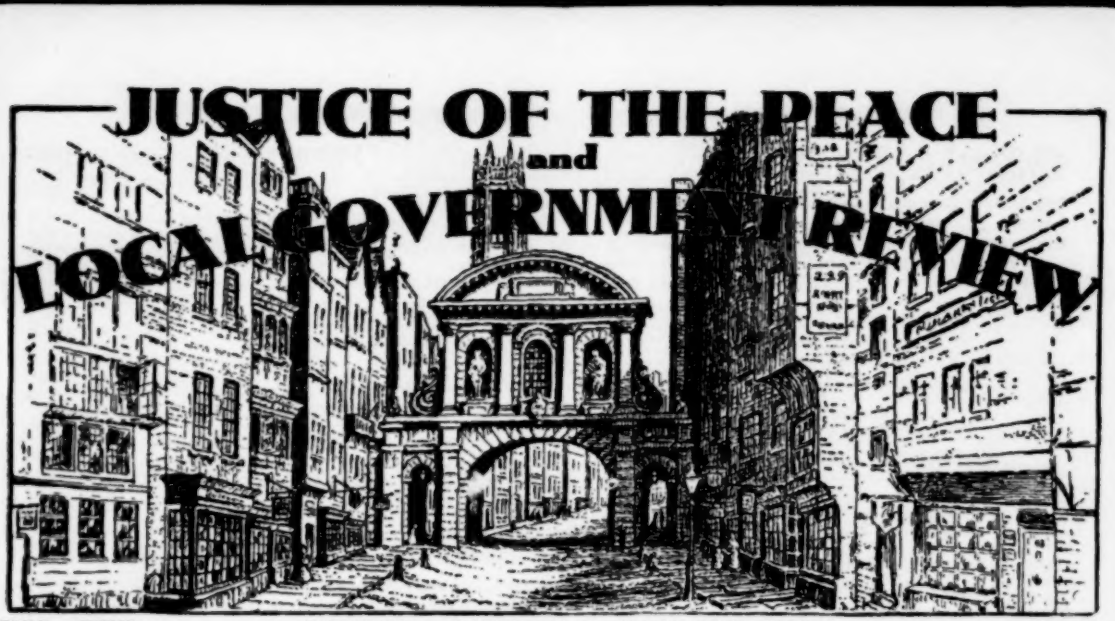

VOL. CXVI LONDON: SATURDAY, AUGUST 2, 1952 No. 31

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex

Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A., F.B.D. and Associated American Detective Agencies. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

BOROUGH OF MARGATE

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with A.P.T. Division, Grades V(a)—VII according to experience.

The appointment is subject to the Local Government Superannuation Act, 1937, and to medical examination, and terminable by one month's notice.

Canvassing of members of the Council directly or indirectly will disqualify.

Applications, giving full details of experience and present appointment, must include the names of two persons to whom reference may be made, and should be forwarded to reach the undersigned, endorsed "Assistant Solicitor," on or before August 13, 1952.

T. F. SIDNELL,
Town Clerk.

40, Grosvenor Place,
Margate.
July 22, 1952.

CITY OF LANCASTER

Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of a whole-time Assistant to the Clerk to the Justices. Applicants must have had considerable Magisterial experience, be competent typists, capable of issuing process, keeping the accounts and taking occasional courts. Salary £450—£550 according to qualifications and experience. Applications to be accompanied by a copy of three recent testimonials.

GEORGE F. HALLAM,
Clerk to the Justices.

21, Sun Street,
Lancaster.

COUNTY BOROUGH OF BRIGHTON

Appointment of Additional Male Probation Officer

APPLICATIONS are invited for the above full-time appointment.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of serving officers. The appointment and salary will be in accordance with the Probation Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than August 12, 1952.

J. GWYNNE THOMAS,
Secretary, Probation Committee.

Town Hall,
Brighton.

HERTFORDSHIRE COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS invited for appointment of Assistant Solicitor. Salary within Grades A.P.T. V(a)—VII. Knowledge of conveyancing and local government experience desirable. Applications accepted from those who have taken Final Examination in June and await result.

Post superannuable. Medical examination necessary.

Applications, stating age, education, qualifications, experience, and names of two referees, must reach the Clerk of the County Council, County Hall, Hertford, by August 18, 1952.

SOMERSET COUNTY COUNCIL

Appointment of Deputy Clerk of the Council

APPLICATIONS are invited from Solicitors with considerable experience in local government law and administration for the appointment of Deputy Clerk of the Council.

The scale of salary is £1,850 per annum, rising by annual increments of £50 each to a maximum of £2,100. All fees received by the Deputy Clerk must be paid into the County Fund.

The Deputy Clerk will not be permitted to engage directly or indirectly in private practice, and he will be required to devote his whole time to the duties of his office.

Applications (endorsed "Deputy Clerk"), giving age, education, legal and academic qualifications, present and past appointments, etc., and the names of three referees, must be delivered to me not later than Saturday, August 16, 1952.

Canvassing, directly or indirectly, will disqualify.

HAROLD KING,
Clerk of the County Council.

County Hall,
Taunton.

LONDON COUNTY COUNCIL

APPLICATIONS invited from men and women under 41 on August 23, 1952, with several years' practical experience in a solicitor's office, for permanent appointment as law clerks, Class II, in the Legal and Parliamentary Dept. Salary £360—£30—£660, commencing according to ability and experience. Prospects of promotion. Compulsory superannuation scheme.

Further particulars and application form (returnable by August 23) from Solicitor, County Hall, S.E. ("Law Clerk"). Send s.a.e. (818).

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 31. LONDON : SATURDAY, AUGUST 2, 1952 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

Pages 479-494 Offices : Little London, Chichester, Sussex. [Registered at the General Post Office as a Newspaper.]

NOTES of the WEEK

Maintenance after Divorce and Remarriage

It is well established that a maintenance order made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1925 to 1949, is not brought to an end by a decree of divorce: *Bragg* v. *Bragg* [1925] P. 20 and *Plunkett* v. *Plunkett* [1937] 3 All E.R. 736. If the wife remarries, that may well be a ground for varying or discharging the order, but it seems clear that it remains in force unless it is discharged.

This principle is strengthened by the decision in *Snelling* v. *Snelling* [1952] 2 All E.R. 196, although it was a case brought in the High Court under s. 19 of the Matrimonial Causes Act, 1950, and is therefore not directly in point. The wife, having obtained a divorce, remarried and her second husband died two days later. The wife subsequently applied for an order of permanent maintenance against her first husband. Upon this the registrar made an order for a nominal sum, the wife not then being in need of more. Upon an appeal from this order, Wallington, *J.*, held that the fact that remarriage, though relevant in considering quantum, was no bar to the wife's application for maintenance.

Prisoners to the Rescue

Two men under arrest for breaking and entering and stealing, while being conveyed by motor-car, had an excellent opportunity to escape when the car was involved in a collision. They chose instead to render assistance to a detective officer who was injured.

At their trial at quarter sessions, they were conditionally discharged. The recorder said he took this lenient course because of the humane way in which the men had behaved.

It is pleasant to read occasionally of incidents of this kind, instead of cases of violence or hostility to the police when in difficulty. No one will quarrel with the decision to reward the conduct of the offenders by extending mercy to them. It does not appear from the report of the case that their antecedents were bad, and though their offence was of a serious class, they had shown themselves to possess some good qualities, and to be above taking advantage of the fact that a police officer was seriously injured and unable to restrain them if they tried to escape.

When, in case of trouble in a prison, a prisoner helps to protect an officer from attack, it is fitting that his conduct should be duly recognized, and the award of some remission of sentence is no doubt the method most likely to be appreciated and to encourage others to behave likewise.

Crime and Delinquency in Canada

In recent years much concern has been felt in Canada at the increase in juvenile delinquency, particularly in the larger cities, due largely to the influence of gangs of youths, sometimes including girls. Progress is now being made in the reorganization of court procedure and in the prison services, not only in relation to juveniles but also as to adults. In Alberta, which is attracting a larger population through the increasing oil industry, legislation has been introduced to provide for the setting up of family courts and for the expansion of the work of the juvenile courts. Youth guidance sections of the city police forces have been established in the two largest cities. Saskatchewan has appointed a provincial juvenile court judge with authority throughout the province. Probation services are also being provided to some of the adult courts through the welfare officers. The province of Manitoba has built a new vocational training school at one of the men's prisons. In Ontario there have been two developments, the appointment of a provincial director of probation to expand and improve the probation services in the adult, juvenile, and family courts, and the opening of a clinic for the treatment of alcoholics. Legislation is to be introduced in Newfoundland to set up a new and modern penal system. A new Family Courts Act has been passed and the first family court set up. The general revision of the criminal code operating throughout the Dominion has been considered by a Royal Commission which reported in April. Several of the witnesses recommended the abolition of corporal punishment but the Bill which has been introduced—much sooner after the report of a Royal Commission than is usual in this country—retains provisions for whipping as a punishment.

Maintenance Orders (Facilities for Enforcement) Act, 1920

An Order in Council has been made extending the application of this Act to Northwest Territories. It is the Maintenance Orders (Facilities for Enforcement) (Northwest Territories) Order (1952), S.I. No. 1220.

Failure to Provide Medical Attention for Child

The New Zealand journal *The Honorary Magistrate* contained a question from a correspondent about a child suffering from tuberculosis or rheumatic fever effects, whose parents do nothing to make special provision for the care of the child. The question is asked: "What action can be taken by the Department to

safeguard the life of the child?" The following is the answer given :

"Under s. 13 of the Child Welfare Act, on the complaint of any constable or child welfare officer, application may be made to the Court to place under the control of the child welfare department, any child which is neglected, etc. We would think that a magistrate would hold that a child, under the circumstances you outline, was being 'neglected.' The purport of the Act is to place the welfare of the child first, and we think the Department would be given authority to see that the child was given proper care. Under a controlling order, the child welfare officer may insist on that care being given, and if it is not given, then he may apply to have the child removed to an institution."

In this country, the law makes special provision for cases in which parents fail to provide or secure provision of adequate medical aid for their children and such parents may be found guilty of wilful neglect, likely to cause unnecessary suffering or injury to health. The matter is dealt with in s. 1 of the Children and Young Persons Act, 1933. Refusal to allow an operation may, in certain circumstances amount to neglect, *Oakey* v. *Jackson* [1914] 1 K.B. 216.

If a juvenile court is satisfied that such an offence has been committed in respect of a child and that the child requires care or protection, it can, in virtue of s. 61 (1) (b) (*i*) of the Children and Young Persons Act, 1933, deal with him by making an order under s. 62 of the Act.

Probation in Berkshire

Berkshire has for many years been regarded as achieving a high standard in the work of probation officers, and the latest report of Mr. E. F. Lapworth, principal probation officer, confirms that opinion. So far as the statistical record of success in probation is concerned, we find about eighty-six *per cent.* of probationers completed their probation period satisfactorily, while figures supplied by the police show that a five year follow up in the case of offenders placed on probation in 1946 reveals the fact that only eleven *per cent.* re-appeared in the courts charged with an indictable offence. Case loads are rather heavy, for one or two officers, but a redistribution of work has been suggested which will no doubt remedy this position.

We have several times called attention to the good work being done by the Salvation Army at the Mayflower Home at Plymouth, and we are glad to read of its being used with some success by Berkshire magistrates.

Clubs are generally to be found in the larger towns, but sometimes village boys and girls are at a disadvantage. Mr. E. N. Dunn, one of the probation officers, has been stimulating interest in the idea of providing a youth centre in the village of Drayton, near Abingdon. This has not been an easy matter. But the work is now well in hand. The justices of Abingdon, Wallingford and Faringdon have been generous in their donations. The third annual camp for probationers and their friends was held in 1951 and by the courtesy of the Captain General and Superintendent, was sited at the Nautical College, Pangbourne.

Here, as in other reports, the difficulty of after-care work is pointed out. Mr. Lapworth writes : "A total of twenty-three prison after-care cases were dealt with this year compared with eight cases last year. The rehabilitation of these men demands intensive case work, especially in the early stages of supervision, and in this connexion we should like to pay tribute to the sympathy and tact shown by the officials of the Ministry of Labour, the National Assistance Board, and Food Officers, who are so helpful in smoothing over the many difficulties that confront a man on his release from a prison sentence."

Probation officers are frequently asked to give lectures, and it is well that they should. On the other hand, probation officers may be very glad to listen to lectures sometimes, and this report shows how they are appreciated.

"Sir Almeric Rich, Bart., Governor of H.M. Borstal, Huntercoombe, and Mr. G. B. Smith, Governor of the Allocation Centre for Corrective Training at H.M. Prison, Reading, very kindly addressed staff meetings during the year. Their talks and the resultant discussions were of real value to us in our after-care work."

Corneal Grafting Act

The Corneal Grafting Act originated in a private member's Bill, which was supported by all parties, and should result in many blind people having their sight restored by using corneas taken from the eyes of other persons after their death. Following research in Australia fifty-two years ago, it was discovered that if the cornea in an eye is injured, it can be replaced by the cornea from another eye, and this will enable sight to be fully restored. Corneas are sometimes taken from living persons, but until the Act was passed it was not possible in this country, as it has been for some years in South Africa, France and Spain, for corneas to be used from dead bodies. The Anatomy Act, 1832, allows *post mortem* examinations to be made and a body to be used for scientific purposes but does not allow any part of the body to be taken away. Even if a testator bequeathed his corneas for this specific purpose this could not be legally done. Under the Act, it will be possible for a person to bequeath his eyes for this purpose and any person in legal possession of a dead body will be able to permit the eyes to be taken, provided there is no known objection from the deceased person during his lifetime or from any relative. Research, however, is necessary to discover some means of preserving corneas after they have been removed from a dead body, as at present they cease to be effective after one or sometimes two days. In the United States some advance has already been made in preserving corneas in a solution. Until satisfactory methods of preservation have been established, it should be possible to arrange for corneas to be dealt with speedily through the hospital service and by having careful records of blind persons who would benefit by such an operation. We hope many people will express their willingness in their lifetime to bequeath corneas from their eyes for this purpose.

Expert versus "Experts"

The annual meeting of the Chartered Auctioneers' and Estate Agents' Institute on June 26, 1952, was marked by a Presidential Address by Mr. Reginald T. Whitton, which is of interest to the local government world as well as to his own profession. Members of the Institute are well placed to form opinions upon several problems with which local authorities are also concerned. There are two pressing, and allied, problems which affect both local authorities and the estate agent's profession. One is to allow for the expansion of towns and villages, to maintain a proper standard of housing and working conditions, without destruction of valuable agricultural land. The other problem is how to produce the maximum amount of food within these islands, keeping a proper balance between the urban and rural populations. Every government of today, especially the Ministers of Food, Agriculture, Health, Housing and Local Government, and—to a less degree—Labour, must have these problems continually under review. But Mr. Whitton suggests that the public fails to realize the loss of valuable food-producing land to housing and industrial development. The total area of the

United Kingdom is some 60,000,000 acres. Of this total, approximately 48,000,000 acres (31,000,000 crops and grass; 17,000,000 acres rough grazing) are producing food. Urban development at the present rate is absorbing eighty square miles of farm land every year. That is equivalent to the loss of between 500 and 600 average farms per year. This represents a portentous loss in foodstuffs, which must be replaced by purchases from abroad, frequently in hard currencies. Mr. Whitton points out (what indeed every engineer to a local authority knows well) that flat, well-drained, agricultural land is also the best land for building. Already there is only half an acre of first-class farmland available per head of our population. Experts hold the opinion that three acres is the minimum required to support a reasonable standard of living. Speaking of the "land budget" he urges that the drawing up of an accurate and detailed analysis of how we are using the land of Britain today, and how we propose to use it in the future, need not involve a large special staff, since a great part of the information required is contained in the records and, above all, in the personal knowledge of the members of his Institute. The Minister of Housing and Local Government has advised local planning authorities, in planning industrial or housing extensions, to give priority to agricultural needs, but Mr. Whitton doubts whether sufficient diligence is used to ensure that good farm land is not used where alternative land is available. Speaking of the Town and Country Planning Act, 1947, Mr. Whitton contends that nobody at the time realized its full consequences. Land does not and will not sell at restricted value. Apart from an urgent need to raise money, land sells because there is a more valuable use for it than that to which it is now put. If the Act remains in force, substantial development or improvement will cost an owner of land more than before. This can only discourage improvements, or increase the price of the "end product." Valuations for development charge are frequently hypothetical. The fate of a neighbourhood or a large enterprise may depend on a piece of arithmetic unrelated to fact. The Central Land Board, against whose decision there is no appeal, has become in effect the planning authority for the whole country.

The Chartered Institute expressed strong views on the subject in a memorandum published in September, 1950. It believes that there should be an end to development charge and that it would not be unduly difficult to adjust the cases where charges have already been paid. On the other hand Mr. Whitton commends the restoration of responsibilities for housing, local government, and planning to one Minister, now known as the Minister of Housing and Local Government, which (he thinks) must cut down expenditure and enable decisions to be arrived at without the serious delays and frustration experienced in the past through the existence of overlapping Ministries.

Economy

Mixed feelings will greet the Government's announcement of fresh economies in local government services, water supply, sewerage and sewage disposal, private street works, coast protection and miscellaneous services, but most local government administrators knew already that such economies were coming. The Chancellor of the Exchequer said in his Budget speech that, under present conditions:

"We need a sustained effort to put economy first; an effort which my colleagues have agreed to make and in which I ask all local authorities and other public bodies to share to the full. I cannot stress sufficiently the importance of economy in the sphere of local government as well as national government."

A circular from the Ministry of Housing and Local Government calls attention to two aspects of economy. The first is economy in its original sense—the determination at every step and every operation to secure careful administration, and to avoid waste. This is, or should be, a permanent feature of local, as well as central, government. Present circumstances emphasize the need for its observance throughout the whole range of local government services. The second aspect results from a situation where there are more demands on the nation's resources than they can sustain at any given time. This may be a temporary feature, but it is undoubtedly a major feature at present. It is necessary, therefore, in order to relieve the demands on labour and materials, to concentrate on the most vital needs among the services for which local authorities require loan sanction or grant. Housing and its ancillary services, water and sewerage, together with certain important water schemes essential alike for rearmament and exports, have the first claim. It follows that many other schemes, excellent in themselves, but of less urgency, must be retarded or postponed. An enclosure to the circular gives details of proposed economies, the result being (in a nutshell) to cut out coast protection and private street works, and to make all other money spending schemes more difficult.

West Ham Accounts

Mr. H. Hayhow, M.B.E., F.I.M.T.A., F.S.A.A., the borough treasurer of West Ham, has published with commendable promptitude a financial summary of the accounts of the corporation for the year ended on March 31 last. The rate levied was maintained at 25*s.* in the £ for the third successive year, balances being called upon to provide a sum equivalent to a rate of 1*s.* 4½*d.* to make this possible. The average rate levied in all county boroughs during the same period rose from 18*s.* 3*d.* in 1949/50 to 20*s.* 1*d.* in 1951/52. Total expenditure amounted to £3,725,000, education being as usual much the heaviest burden with a figure of £1,558,000. "General Administration and other Services" ranks next with a total of £480,000, but this sum includes amounts in respect of acceleration of debt redemption and provision for capital expenditure. Housing is a heavy charge, rents meeting only fifty-four *per cent.* of the annual expenditure and leaving £180,000 to be met from the pockets of ratepayers and taxpayers. There are 6,963 dwellings involved.

The ratepayers were called upon to meet 39.5 *per cent.* of the total bill. Mr. Hayhow, in his preface, notes that derating relief to industry amounted in the year to £399,000, equivalent to twenty-six *per cent.* of the total rate, subject of course to the modifying effect of the Equalisation Grant. It is undoubtedly a large slice of revenue to be lost, but it appears from the statement of the Minister of Housing and Local Government at the conference of the Institute of Municipal Treasurers last month, that the Government have no intention of altering the existing law.

West Ham was a front line town in the last war, and this fact is apparent in the statistics. Population has gone down from 255,000 in 1939 to 171,000 in 1951, the number of hereditaments from 59,000 to 47,000, and rateable value from £1,512,000 to £1,202,000. Special Government financial assistance amounting to £37,000 was received in the year.

The summary contains a number of useful tables, the last one of which shows that the average rateable value of dwellings in the borough is £15 and that the average ratepayer pays 7*s.* 2*d.* per week for the services provided. Other tables analyse each £1 of expenditure and income and show the average weekly expenditure per head of population for each of the principal services. This information is so interesting and useful that it deserves a rather better layout.

THE MAGISTRATES' COURTS BILL

This is the third and concluding article dealing with some of the minor amendments and improvements proposed to be made by the Magistrates' Courts Bill. The other articles appeared in our issues of June 21 and 28 respectively.

Enforcement of costs ordered on abandonment of appeal.—The Summary Jurisdiction (Appeals) Act, 1933, s. 4 (3) enacts that costs ordered to be paid under s. 4 (2) (*b*) of that Act " may be recovered summarily as a civil debt by the party to whom they are ordered to be paid." This form of words requires that, although a court has fixed the amount of costs and has ordered their payment the party to whom they are payable has to obtain under s. 35 of the Summary Jurisdiction Act, 1879, an order for their payment before he can proceed to enforce payment. This was probably never intended, and has the disadvantage that the complaint for such an order under s. 35 must be made within six months of the time when the costs were awarded, whereas the subsequent enforcement by judgment summons can be undertaken at any time. In the Bill cl. 85 (3) provides that such costs " shall be enforcable as a civil debt." This brings in cl. 73 of the Bill which requires proof of means as under existing law, and provides that a complaint for a judgment summons to enable such proof to be given may be made at any time. Rule 49 deals with the service of judgment summonses, with a slight variation in the provision which permits service to be other than personal when a justice is satisfied by evidence on oath that prompt personal service is impracticable. He may then " allow the summons to be served in such a way as he may think just."

Case stated—time limit for application to state.—Notice of appeal to quarter sessions must be given within fourteen days after the day on which the decision of the summary court was given. Application to state a case must be left with the clerk of the summary court at any time within seven clear days from the date of the proceedings to be questioned. Any person who appeals by way of case stated shall be taken to have abandoned finally and conclusively his right to appeal to quarter sessions.

It is thought that there is no logical justification for requiring the application to state a case, involving abandonment of the right of appeal to quarter sessions, to be made within seven clear days, while allowing fourteen days for the service of notice of appeal to quarter sessions. Clause 87 (2) of the Bill provides, therefore, that application to state a case shall be made within fourteen days after the day on which the decision of the magistrates' court was given.

Clause 87 (3) brings the two kinds of appeal still further into line by applying to appeal by case stated the provision of s. 36 (3) of the Criminal Justice Act, 1948, that the day on which the decision is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.

As a matter of interest readers may like to be referred to rules 61 to 64 which have reference to cases stated.

Enforcement of recognizances.—The Summary Jurisdiction Act, 1879, s. 9 deals with the enforcement of recognizances of various kinds and provides different methods of enforcement according to the nature of the recognizance which is to be enforced. This has always been somewhat confusing, and the amendment to s. 9 (2) introduced by s. 26 (1) of the Criminal Justice Act, 1925, produced the position that whereas proof of a conviction was necessary to justify forfeiture of a recognizance to keep the peace, proof of something rather less was sufficient in the case of a recognizance to be of good behaviour. The Bill proposes to assimilate the procedure for enforcing the different types of recognizance, and to make the necessary minor modifications which this entails. Clause 96 is the relevant one.

Where a recognizance to keep the peace or to be of good behaviour has been entered into before a magistrates' court or a recognizance is conditioned for the appearance of a person before a magistrates' court or for his doing any other thing connected with a proceeding before a magistrates' court, and the recognizance appears to the court to be forfeited the court may declare the recognizance to be forfeited and adjudge all or any of the persons bound thereby, whether as principal or sureties, to pay the sum in which they are respectively bound, or any part thereof. The court also may remit the sum entirely.

In the case of recognizances to keep the peace or to be of good behaviour the court is not to forfeit the recognizance except *by order on complaint*. (Note the substitution of this wording for the reference to " may by conviction adjudge " in s. 9 (2) of the 1879 Act). No question of any loss of a right of appeal is involved (*see R. v. Durham JJ., ex parte Laurent* [1944] 2 All E.R. 530).

Payment of any sum adjudged to be paid, including any costs awarded against the defendant, is to be enforced as if it were a fine imposed on summary conviction. The court may, however, in any case if it thinks fit, reduce or remit the sum absolutely or conditionally at any time before the issue of a warrant of commitment or the sale of goods under a distress warrant issued to enforce payment.

Any such recognizance as is mentioned in cl. 96 is not to be enforced by any other method and shall not, therefore, be transmitted to quarter sessions nor shall its forfeiture be certified to quarter sessions.

We call attention also, without going into details, to the changes in the procedure by which a surety in a recognizance to keep the peace or to be of good behaviour may apply to have his principal brought before a court of summary jurisdiction when he suspects that the principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognizance. The present provisions are in s. 26 (2) of the Criminal Justice Act, 1925. The proposed new provisions are in cl. 92 of the Bill.

Composition and place of sitting of magistrates' courts.—The proposals we now consider probably do not make much change in existing practice, although they do alter in some respects the letter of the existing law. The relevant clause is cl. 98, and we will take the proposals in sequence :

1. A magistrates' court may not try an information summarily, or hear a complaint, except when composed of at least two justices unless some enactment specifically authorizes the trial or hearing to take place before one justice.

2. An inquiry into an offender's means must take place in open court and before at least two justices.

3. No indictable offence, even if it is also triable on summary conviction (*see* definition of " indictable offence " in cl. 125 (*b*)) may be tried, and no complaint may be heard, except in a petty sessional court house, in open court.

4. Any offence which is not indictable must be tried in a petty sessional or an occasional court house, and in open court.

5. Imprisonment must not be imposed except in open court as in 4. To " impose imprisonment " is defined in cl. 126 as

passing a sentence of imprisonment, fixing a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress, or for failure to do or to abstain from doing anything required to be done or left undone.

6. The requirement in s. 20 (8) of the Summary Jurisdiction Act, 1879, that public notice must be given of the days on which justices will sit to deal summarily with indictable offences is not reproduced.

Our readers will recognize that s. 20 of the Summary Jurisdiction Act, 1879, is the basis of most of the present law on the above matters. Some other of its provisions are reproduced in cl. 98, which incorporates also the provisions of s. 25 (2) of the Criminal Justice Act, 1948, by which an offender can be sentenced by a court other than that which convicted him.

Clause 98 is to have effect subject to the provisions as to domestic proceedings contained in cls. 56 to 58.

Powers of remand of metropolitan magistrates.—At present a metropolitan magistrate, in the exercise of powers conferred by s. 36 of the Metropolitan Police Courts Act, 1839, may remand for more than eight days in custody when hearing a case under the Indictable Offences Act, 1848. It is proposed to abolish this special power and consequently cl. 105 (4) makes no exception in favour of metropolitan magistrates.

Further remand in the case of illness, etc.—The Criminal Justice Administration Act, 1914, s. 20 (1) authorizes a magistrates' court to grant a further remand, in the case of a person accused of an offence, in the absence of that person if the court is satisfied that he cannot appear because of illness or accident.

The Bill proposes, in cl. 106, that this power shall be extended to apply in the case of any person who has been remanded. As in s. 20 (1), *supra*, there is no time limit fixed for the period of such a remand. If the person so further remanded is on bail the power may be exercised by enlarging his recognizance and those of his sureties, if any, to the later date.

It is proposed to give also the power, in the case of a person remanded on bail, to enlarge the recognizances in that person's absence even when the question of illness or accident does not arise, and such an enlargement of the recognizance is to be deemed to be a remand. In such a case, however, there is no exclusion of the time limits governing remands (*see* cl. 105). This power will be useful in cases where it is known that, because, say, of the illness of a material witness, a hearing fixed for a particular day cannot be effective. It will be possible to warn a defendant in advance that he need not appear, and that application will be made for the enlargement of his recognizance, and this may save a defendant an unnecessary journey and loss of time and work. This is not an entirely new provision. It is an extension to all cases and to all magistrates' courts of the power given to metropolitan magistrates by s. 36 of the Metropolitan Police Courts Act, 1839.

One day's detention.—The power given by s. 12 of the Criminal Justice Administration Act, 1914, to order one day's detention has probably been exercised by many courts in circumstances not authorized by the wording of s. 12. It is thought that this extended use of the power should be given statutory authority. It is therefore proposed, in cl. 110, that in the case of a person convicted of an offence who might have been committed to prison, the court, in lieu of so committing him, may order one day's detention, *i.e.*, that he be detained, either in the court house or at any police station, till not later than 8 *p.m.* on *the day on which the order is made*. Such an order is not to be made as will deprive the offender of a reasonable opportunity of returning home on the day of the order.

Justices exercising their powers in an adjoining area.—It is thought that the provisions of ss. 5 and 6 of the Indictable Offences Act, 1848, applied to summary cases by s. 6 of the Summary Jurisdiction Act, 1848, are not entirely clear and for the purpose of consolidation it has been thought better to have one simple rule to apply in all cases. Clause 116 proposes that a justice of the peace for a county may act as such in any adjoining county or borough, and that a borough justice may act as such in the county in which the borough is situated or in any county or borough adjoining that borough.

Committal for trial to next quarter sessions but one.—Section 14 (5) of the Criminal Justice Act, 1925, allows the examining justices to commit for trial, in certain circumstances, to the next quarter sessions but one in the case of a person who is on bail. As a corporation cannot be committed for trial on bail it seems doubtful whether s. 14 (5) can be applied. It is proposed to apply the subsection to corporations, and this is given effect to by para. 6 of the second schedule of the Bill.

We do not pretend to have dealt with all the proposed minor amendments and alterations, and it may well be that when the Bill becomes law we may find it necessary to deal with some which we have not touched upon in these articles. Our readers will probably consider that these are already long enough and will not regret, for the time being, any omissions of which we may have been guilty.

DATA ON DRUNKENNESS

By W. CLIFFORD

With the Criminal Statistics for 1950 recording 49,007 offences against the liquor laws of England and Wales, the recent rise in this type of offence continues. In 1946, 21,745 offences were committed ; in 1947 it was 26,201 and by 1948 the number had grown to 33,599.

This increase is, at this stage, more significant than alarming. It may represent no more than a periodic fluctuation in the general decline in drunkenness which has been a notable feature of the last fifty years. Taking a long view, one does not need to include statistics to show that sobriety has improved during that time—the extent to which intoxication has waned as a social problem is well known. But for the sceptic, the Criminal Records contain a graphic illustration. From an annual average of 218,459 offences connected with drunkenness during the years 1900-09 there has been a steady drop through an annual average of 53,545 offences between 1930 and 1939 to the relatively low figure of 28,325 from 1945 to 1949.

It is, therefore, too early yet to attempt any valid interpretation of the upward trend of these minor contraventions during recent years. It is a drift which will need careful watching, however, and it does serve to remind us that there is a continuing problem of alcoholic addiction—always the worst feature of drunkenness and always the most difficult to handle. It may be that the increase in the number of offences means an increase in the number of confirmed alcoholics. These are the people who by their frequent court appearances add liberally to the statistics.

Clearly, the vast improvement during the last half century is more attributable to a profound change in social conditions and habits than to the special achievements of medical treatment for alcoholics. If we have less drink addicts in these days it is because

the day to day customs of the population as a whole expose fewer individuals to the dangers of regular intoxication, rather than that a new cure has been found for the inebriates. Nevertheless, new methods of treatment have had a part to play, and the efforts to solve the problem which alcoholics present have not been without success.

The craving for drink has been variously regarded as arising from an instinct, as of psychological origin and as a result of some blood stream or glandular deficiency. The instinct theory has not found much support, but the evidence does favour the other two. Freudians have explained alcoholism in terms of repressed homosexuality, and most psychologists have stressed the significance of drink as a means of escape from reality. The physiological explanation has received considerable emphasis recently from the work of Williams, Beerstecher and Berry on what they have called " genetotrophism." Relating disease to nutrition, their research has shown that the appetites of laboratory animals for alcohol can be varied by altering the nutrition—suggesting an interpretation of drinking in terms of the individual metabolism. It seems more consistent with experience to regard addiction as both physical *and* mental, each aggravating the other ; modern methods of treatment allow for the influence of both these factors.

The direct attack on the insatiable thirst for alcohol is more promising today than at any time in the past. One of the great difficulties in treating these cases was always the fact that they could rarely be kept away from liqour long enough to change their habits. It often meant day and night supervision if they were to be denied all access to the bottle. We are all familar with the dipsomaniac who would, if given the chance, drink secretly whilst in hospital for treatment. A forestalling of all the ingenious attempts to obtain beer or spirits—even paraldehyde or methylated spirits—formed an important part of any treatment. Such close supervision was needed that, from the courts' point of view, probation alone was often useless for the true addict. Nowadays there is no need for any such caution, and it is in connexion with this aspect of the treatment that there has been the greatest advance.

The problem was to find something which would turn the drinker against the liquor for a long enough period to allow him to form new habits and find a different way of life. Perhaps the clue was given by Pavlov, the Russian psychologist who pioneered the use of the conditioned-reflex. By feeding a dog and ringing a bell at the same time he eventually found that it was possible to obtain all the physiological preparations for eating (such as the formation of saliva) by simply ringing the bell. He had conditioned the bodily reflexes to a new stimulus. On this principle Dent began to treat alcoholics with apomorphine which produced a revulsion to alcohol, and in the United States emetine was used to obtain the same effect. If the reflexes could be so altered that, instead of craving for drink, the addict's constitution was nauseated by it, there was no need for supervision to see that he did not get an odd drink. If, further, this conditioning of the reflexes could be made a permanent thing, then the subject was cured, for despite himself he could not go on taking liquor which made him violently ill. The permanent effect does not seem to have been achieved, but a further advance has been made by the recent discovery of " Antabus " by Dr. Erik Jacobson of Copenhagen. Working on the same principle as the other methods, " Antabus " can be administered in tablet or liquid form, and has the effect of causing severe nausea should the patient attempt to take any alcohol. Here again time is provided for the formation of better habits of life, but success depends on the man or woman being able to do without treatment after a few months and being able to avoid drink altogether.

It is evident then that all these physiological ways of dealing with the inebriate require social re-adjustment as a complement. Whilst the patient is having treatment active measures need to be taken to encourage him to different interests and to lead him to a better way of living after the doctors have done their work. Thus in Denmark today it is possible for a person who has committed a crime under the influence of drink to be placed under a kind of probation. For four years he attends an institute for out-patient treatment and whilst he is receiving " Antabus " he is under the care of the welfare officer who helps him to reorganize himself. This procedure is also possible in this country where the probation officer might be entrusted with this kind of supervision, and as part of the order the offender may be required to attend a specified clinic or hospital for treatment. The difficulty would appear to be that if the patient is expected to take tablets himself, he may not be doing so at the right times or in the manner that he should. The alternative is some form of institutional treatment as an in-patient.

There are still expensive courses of treatment in special homes for those able to afford them and others less costly provided by several charitable organizations. The Habitual Drunkards Act, 1879, authorized justices to licence retreats for the admission of habitual drunkards on their own application and the Inebriates Act, 1898, which was never fully implemented provided for the establishment of Inebriate Reformatories. The Church of England Temperance Society and one or two other bodies have licensed homes where treatment is given for a moderate fee, penurious cases receiving special consideration. These retreats have done excellent work in the past, but on a limited scale. The number of persons admitted to retreats under the Habitual Drunkards Act in 1930 was only nine and by 1936 none at all were being sent. More recently, the new medical remedies have been extended to most through the National Health Service. The courts, by an enlightened use of s. 4 of the Criminal Justice Act, 1948, have applied the latest methods to those who would otherwise be tumbling in and out of lodging houses and prisons. Co-operation between doctors, magistrates, probation officers and voluntary organizations have brightened the prospects for these unfortunates.

When an alcoholic is before the court, a probation order is made under s. 4, after the accused has agreed to enter hospital for a period not exceeding twelve months. He then receives the treatment he needs as an in-patient and may be detained at the hospital for a time after the " Antabus " or other physical treatment has ended in order to confirm any improvement in his habits. The probation officer is officially the liason between the court and the hospital, but he usually becomes very much more, helping to deal with any personal or family troubles and finding accommodation and employment on the man's discharge. The co-ordination between the legal, social and medical agencies is helping to make this form of treatment very effective. There are, however, several drawbacks.

The hospitals in which this form of treatment is given are frequently mental hospitals—some of old design which are not able to provide separate wards for this type of patient. Some alcoholics do not like the idea of going to a mental hospital, and those that may agree to do so often find the presence of other patients with various forms of mental disease quite intolerable. On the other hand, one cannot generalize about inebriates. There are certainly those who are " pure " alcoholics—victims only of their own indulgence—but with very many alcoholics the drinking is but a symptom of some deeper trouble. Neurotics and those with definite mental disabilities may turn to beer or spirits as a result of the anxieties and conflicts produced by their psychological ailments. Underlying the addiction to alcohol there may be a psychopathic condition, especially amongst

those who are convicted of crime. For these patients, the mental hospital is the most suitable place, since their mental troubles needs as much attention as their craving for drink. It is also true that the " pure " alcoholic without any complicating mental disease is nevertheless in need of some psychotherapy. We have seen that the craving is psychological as well as physical and his moodiness, his unwillingness to face reality and his loneliness call for some consideration. To distinguish these different kinds of alcoholics may not be so very easy in the beginning. When they can be separated however it would seem desirable to provide the same physiological treatment and some psychological help at other than mental hospitals for those whose only problem is drink. At least one large hospital in the Home Counties has a special branch for inebriates. The idea is worthy of extention where possible and the system of retreats might be brought into fuller use.

Another disadvantage arises with the most difficult type of patient who will not stay in the hospital for the period needed. When the probation order is made he is placed in the hands of the doctors for anything up to a year but he enters the mental hospital as a voluntary patient, which means that he can leave when he wishes by giving seventy-two hours notice. It is true that he might be arrested for a breach of probation if he leaves in this way without permission, but with the true addict a period of imprisonment or a fine as a punishment for the breach of probation does not help him very much and leaves him a burden to the community. It is the alcoholic who is most difficult about staying in hospital for the treatment who is usually the one needing it most. He is also the one least likely to be reliable as a co-operative out-patient.

Yet allowing for these difficulties, the measures provided for the reclamation of the inebriate seem to be promising and some progress has been made by the wise application of s. 4. It is to be hoped that in time the accumulation of experience of these cases and the close understanding between those working for the person's medical, mental and social betterment will increase the degree of success.

For the alcoholic gaining some control over himself, there is the voluntary association known as Alcoholics Anonymous, or simply " A.A." Using a monomark address and knowing each other only by their Christian names, those who are members of the association and are themselves cured addicts, offer companionship, encouragement and help during those very trying periods when the patient is beginning to stand on his own feet and re-assume his responsibilities. With the widening of the influence of a society of this kind, the medical achievements and the developing work of social rehabilitation, the inebriate is no longer a completely hopeless problem for himself and the community.

DUAL CONTROL—COMMITTEE AND OFFICER

[CONTRIBUTED]

Some interesting points were raised in one of the discussions on an address given at the annual Conference of the Institute of Municipal Treasurers and Accountants (Incorporated) at Brighton this year.

Council members and officers took part in discussing what has become an important matter, yet is seldom, if ever mentioned openly.

It was suggested that if councillors were given much more detail in the numerous reports and agendas submitted to committees of the council, the tables would, in effect, be turned—the elected representatives would control detailed operations and administration, while officers would look after questions of policy.

There is not, really, any " danger " (or likelihood) that this may happen, and it is not here implied that a strictly literal meaning was intended to be attached to the observations. Rather were they made to draw attention to overlapping in control, to the detriment of all.

In the past, much has been written and spoken on questions affecting committees and their relationship with and to officers—the generally accepted view being that elected members should (almost) exclusively control policy (even though the officers may influence it and, in some circumstances, actually be invited to help in shaping policy) while the officers' duty and responsibility are to manage and control the organization and administration of what the elected members direct.

" DIVIDED," NOT " DUAL " CONTROL

The adjectival qualification is here used intentionally to bring into the realms of consideration the important difference between the words " dual " and " divided " and (further) the unfortunate fact that in too many cases the councillor fails, unintentionally, to know there is a difference and beyond that (or rather, where he does know the distinctions) his failure to recognize where one applies and the other does not.

The writer wishes to emphasize that if the generally accepted apportionment of responsibility as above outlined be applied, then the distinction is that there ought to be *divided* control and not *dual* control. Perhaps it would be better to regard the problem as one which should be divided into two separate problems so that there is no overlapping, no encroachment either intended or accidental. It seems that by friendly and peaceful means a state of affairs should be arrived at, by making it as great a transgression of propriety for a member of the council to interfere directly in organization and administration (except when and where invited to do so, or when and where some higher power than is possessed by the local authority directs it) as it is or would be for the head of a department to interfere in matters of policy—subject to similar qualifications as above suggested. It would help to reduce or eliminate meddling by elected representatives.

Then there would be a proper system of divided responsibility.

CO-OPTION—THE SAFEGUARD

Councillors (including in that term " aldermen ") are a " mixed lot," which is as it should be in a country committed to popular election. Their numbers may include suitable types for all committees, or they may not. If the former, all may be well, provided that square members are not put on round committees and that the members apply their ability in the proper way, subject to the proper division of responsibility as above indicated. If the council does not embrace all suitable types then, in so far as powers of co-option are possessed, they should be exercised.

Many local authorities comprise artisans, clergymen, clerks, doctors, labourers, lawyers, merchants, shop-keepers, social workers, tradesmen, members of other professions, and others. Comparatively seldom, however, does service on the council appeal to the professional classes, such as accountants, architects, bankers, engineers (electrical and other), and surveyors, physicians, and so on ; yet all the medium and larger authorities

have committees and departments of which the paid heads are connected with those professions.

If there is nobody on the committee who understands the technical side of the department or service which it controls, the committee is bound to act on the advice of its officers or take the risk of acting wrongly. It is well-known that chief officials are capable of guiding the council members in the right paths.

If however there could also be experts on the committee, the elected members would feel that they had double guidance—from the unpaid member and from the official.

This would act as a very strong safeguard to elected representatives and to officers, since it would :

(1) Enable the committee to have professional advice from the inside or policy angle ;

(2) Obviate or reduce any believed need on their part to interfere ;

(3) Fortify the committee in the knowledge or belief that the officer advises them well, and

(4) Help the officer where any differences or doubt arise between members and official, in that the professional member would understand the official attitude.

Writing from experience (which incidentally is not so widely available as might be desired) the writer considers that presence of one or more persons professionally qualified, similarly to the officer, does not act detrimentally to the head of the department. The member does not keep trying to catch the other out, to hope to find him "napping," to order, or even to advise him, what to do in the organization and administration spheres. But by reason of his similarly trained mind he appreciates what the officer does, supports him, defends him against other members of committees and council, and (if need be and if requested) will unofficially discuss difficult practical problems where according to the old proverb : "Two heads are better than one." Even if the course taken goes wrong, the chairman or member who has been unofficially in at the decision is not as likely to be unduly critical as he might be in other circumstances.

It is not that the officers necessarily need assistance or alternative opinions but, because of the feeling that their advice would be appreciated from the other side of the table.

There can be no doubt that experts on the committees as distinct from in the committee would, generally speaking, be a good thing. This has been realized by the legislature in providing for the co-option to the committee of persons other than councillors, who are experts in the subject matter dealt with by the committee. It has been followed in certain lines but not others, while in some of the vital matters there is no power to add to the numbers by this method.

The Local Government Act, 1933, provides by s. 85, *inter alia*, power to co-opt members :

"A committee appointed under this section (other than a committee for regulating and controlling the finance of the local authority or of their area) may include persons who are not members of the local authority ; provided that at least two-thirds of the members of every committee shall be members of the local authority."

It is suggested that a wider (though judicious) use of the power to co-opt non-members of the council to committees would be a great move forward, even if it did not please councils to introduce those who were better fitted to do what they ought to be able to do. J.H.B.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Lord Porter, Lord Goddard, Lord Oaksey, Lord Morton of Henryton and Lord Reid)

EDWARDS AND ANOTHER *v.* RAILWAY EXECUTIVE

May 5, 6, 7, 8, July 11, 1952

Negligence—Child—Injury on railway line adjacent to recreation ground—Access to line through hole made by children in fence—Frequent repairs to fence—Licensee or trespasser.

While on a railway company's property, a boy aged nine years was run over by an electric train and injured. The railway line was laid on an embankment at the foot of and adjacent to which was situated a public recreation ground maintained by the local authority. Between the foot of the embankment and the recreation ground the company had erected a fence consisting of concrete posts between which ran strands of wire fixed to the posts by split pins. For many years children had been accustomed to climb through the fence by pulling out the split pins, removing the wire, and tobogganing down the embankment. The fence was repaired by the company's servants whenever it was seen to have been interfered with. The accident occurred when the boy, looking for a ball which had been propelled on to the embankment, went through an opening in the fence, climbed the embankment, and, while crossing the line, slipped and fell between the rails and was run over. Until the day of the accident the boy had never been through the fence and on to the embankment, and he had been warned by his father not to go through the fence. He had no knowledge of the practice of sliding down the embankment, and had not wanted to do so himself. In an action by the boy and his father against the respondents for negligence,

Held : to establish that the boy was on the embankment as a licensee, the onus was on those claiming it to show either express permission by the railway company or that the company had so conducted itself that it could not be heard to say that it did not assent to the use of the premises by children ; a licence was not to be lightly inferred, and the onus was not discharged by showing that in spite of the fence the children constantly broke through ; even assuming that the company had knowledge of the intrusion, that of itself did not constitute the children licensees, nor was the company bound to take every possible step to keep out intruders ; so long as it took some steps to show that it resented and would try to prevent the intrusion, that was strong evidence to rebut the inference of a licence ; in this connexion it was material to consider the state of mind of the boy and whether in the circumstances he thought that he was on the premises with the leave of the company : on the facts there was no evidence from which it could reasonably be inferred that the railway company acquiesced in the use of the embankment by children and, therefore, the boy was a trespasser and as such the company did not owe him the duty they would have owed to a licensee.

Counsel : *Platts-Mills* for the appellants ; *Beney, Q.C.*, and *Neil Lawson*, for the respondents.

Solicitors : *Walter O. Stein* for the appellants ; *M. H. B. Gilmour* for the respondents.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

COURT OF APPEAL

(Before Somervell, Denning and Romer, L.JJ.)

McINTOSH (INSPECTOR OF TAXES) *v.* MANCHESTER CORPORATION

July 14, 1952

Income Tax—Industrial building allowances—"Cutting"—Excavation of land by water undertaking—Income Tax Act, 1945 (8 *and* 9 *Geo.* 6, *c.* 32), *s.* 14 (1) (*b*), *and proviso.*

APPEAL by Manchester Corporation from an order of VAISEY, J., dated March 5, 1952, and reported 116 J.P. 209.

The corporation claimed income tax annual allowances under s. 2 of the Income Tax Act, 1945, on capital expenditure incurred in the construction of industrial buildings and structures which formed part of its waterworks undertaking. Allowances were refused on that part of the expenditure which related to excavation work, on the ground that such work was "cutting" land and that allowances in respect thereof were excluded by s. 14 (1) (*b*) of the Income Tax Act, 1945, and the proviso thereto. The Special Commissioners found that "cutting" referred only to operations which resulted in "cuttings,"

in the sense of open ways through land, and they allowed the appeal. VAISEY, J., reversed the decision of the Special Commissioners, holding that "cutting" meant any incision of the earth which severed the continuity of the soil. The corporation appealed.

Held: the word "cutting" in s. 14 (1) (*b*) of the Income Tax Act, 1945, and the proviso thereto, meant excavating, and was not limited in its application to operations resulting in "cuttings" in the sense of open ways through land, and, therefore, the claim of the corporation was properly disallowed.

Appeal dismissed.

Counsel: *Burton, Q.C.*, and *Senter*, for the corporation; *The Solicitor-General* (*Sir Reginald Manningham-Buller, Q.C.*), and *Sir Reginald Hills*, for the Crown.

Solicitors: *Sharpe, Pritchard & Co.*, agents for *Philip B. Dingle*, town clerk, Manchester; *Solicitor of Inland Revenue*.

(Reported by C. N. Beattie, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Pearce, J.)

HAYNES *v.* HAYNES

June 24, 1952

Justices—Husband and wife—Separation order—Variation—Deletion of non-cohabitation clause—Husband's desire to make amends and resume married life—Summary Jurisdiction (Married Women) Act, 1895 (58 and 59 Vict., c. 39), s. 7.

On March 31, 1952, the justices found the husband guilty of persistent cruelty and made a separation order in favour of the wife. On appeal by the husband.

Held: it was open to the justices to make the order which, therefore, would not be set aside, but if the husband were to offer to make amends, that would be fresh evidence to support an application under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, for a variation of the order by deleting the non-cohabitation clause.

Counsel: *Lermon* for the husband; *A. L. Gordon* for the wife.

Solicitors: *Kingsford, Dorman & Co.*, agents for *Dawe & Co.*, Kingston-on-Thames, for the husband; *Preston, Lane-Claypon & O'Kelly*, agents for *Cole & Cole*, Oxford, for the wife.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

NEW COMMISSIONS

DORSET COUNTY

Frank Holmes, Lacey, Salisbury Road, Swanage.

Lt.-Col. Sir Thomas Henry Salt, Bart., Shillingstone House, Shillingstone.

Mrs. Florence Muriel Shore, 3, Hendrie Close, Swanage.

LINCOLN COUNTY (PARTS OF HOLLAND)

Mrs. Edith Marjorie Mayhew Clark, Field House, Fleet.

LINCOLN COUNTY (KESTEVEN)

Herbert Hutchinson Brown, Eslaforde House, Eastgate, Sleaford.

NOTICES

A special sitting of the court of quarter sessions for the borough of Grantham will be held in the Sessions Hall at the Guildhall, Grantham, at 11 *a.m.* on Wednesday, August 6.

The next court of quarter sessions for the city of Winchester will be held at the Guildhall on Friday, August 8, 1952, at 10.45 *a.m.*

MISCELLANEOUS INFORMATION

TOWN AND COUNTRY PLANNING

REFORM OF DEVELOPMENT CHARGES

A recent adjournment debate in the House of Commons indicated the strong dissatisfaction to which the provisions in the Town and Country Planning Act, 1947, relating to Development Charges had given rise.

Broadly speaking the public's complaints against development charges came under three heads:

First, it is felt and strongly felt that the development charge adds to the cost of development. In theory the developer should be able to buy land at existing use value in which case his combined outlay on the land and the charge would not exceed what he would otherwise have had to pay for the land alone. In practice this rarely happens unless compulsory powers are used. There is, therefore, a wide gulf between theory and practice.

Secondly the development charge constitutes a tax on development. In theory the charge is supposed to be part of the purchase price of land; in practice it is used as a tax levied over and above the full cost of land and developers, particularly those intending to build private houses, cannot understand why they should pay the state before they can carry out development which is in the public interest.

The third criticism is that the method of assessment of development charges is arbitrary. The public do not understand the basis of the development charge and are baffled by the wide variation of charges levied on, for example, a three bedroom house, not realizing that it is the result of variation in land values. Their feelings are exacerbated because the basis of the assessment is artificial and there is no right of appeal from one. [As the sums of money payable as development charges are often very large, if they are to continue, an appeal must be allowed for and it seems that the Lands Tribunal would be a suitable Court to deal with the matter with its qualified composition of barristers, solicitors and persons having experience in the valuation of land and jurisdiction in general subjects].

In raising the question on the adjournment Mr. Howard Johnson (Brighton, Kemptown) made a number of interesting points. He drew attention to the fact that both the previous Minister of Town and Country Planning (Mr. Dalton) and the present Minister of Housing and Local Government (Mr. Macmillan) seemed to be agreed that development charges are a deterrent to building development. Mr. Dalton had indicated this in a speech in the House in June, 1950, whilst the present Minister had said at Manchester, on April 19, that the development charge was one of the major obstacles to-day and that he hoped to have some proposals ready for the next Session of Parliament.

He (Mr. Johnson) said that since the local press in his constituency had indicated that he proposed to raise the subject on the adjournment he had received the astonishingly high figure of seventy-three letters from persons living in the coastal belt of Sussex, particularly at Brighton and Hove, who complained that they could not build their homes because they could not afford to pay a development charge ranging between £250 and £375. He went on to refer to s. 80 certificate, land which may be developed free of development charge because by July 1, 1948, the fortunate owner had his plans approved under the building byelaws and the town planning requirements. The result of his being able to build free of development charge was that the price paid for that land which has the benefit of a s. 80 certificate was absolutely sky-high. There was a scarcity of land and scarcity prices were charged for it. There was another inherent evil in that the district valuer was now able to assess development charges on land which did not have the s. 80 certificate by comparison with the prices obtained for the land which had a certificate. There was a double evil for the person who wished to build on that land because he had to pay a high price and the person who wanted to build on adjoining land had to pay a higher development charge due to the snowball effect of the scarcity value.

As an illustration of an anomaly under the Town and Country Planning Act, Mr. Johnson cited the case of two elderly spinsters who, owning a plot of land jointly, could not build free of development charge because they were joint owners. Seventeen years ago these two ladies purchased a plot of land on which to build a bungalow for themselves. Owing to financial considerations and the advent of war they were unable to build. Now their financial circumstances had improved and they were anxious to build on their single plot but they could not be granted the single plot concession but had instead to pay a development charge because they were joint owners.

He also cited the case of a hotel in his constituency which had not proved a commercial success and which it was, therefore, proposed to convert into thirty flats and maisonettes envisaged to accommodate thirty families. The owners were assessed to a development charge of £10,000 (subsequently reduced to £8,000 after negotiations) which sum they were expected to defray before they could start on making the extensive operations required to alter the hotel into flats and maisonettes.

At Brighton the borough surveyor had told him that up to June 30, 1952, his authority had issued 197 private building licenses and up to date thirty-nine of those licences had been returned. In the borough surveyor's view the majority of the licences returned were sent back because the persons who wished to build under them could not afford, in addition to paying for the land and the cost of building, to pay a development charge varying from £250 to £400.

Mr. Johnson suggested that the Minister should, by regulations made under s. 12 (2) (*f*) of the Town and County Planning Act, 1947, exempt from development charge the building of a house for an

owner-occupier provided that the house does not exceed a prime cost of £2,500. This would be a tremendous alleviation to the very many people who were anxious and able to build their own homes on land which they could purchase at a reasonable price and would exempt them from a development charge.

Mr. Anthony Marlow (Hove) said that all Members of Parliament had had to submit to the Minister cases of people anxious to build who were only deterred from doing so by this development charge. In his constituency he recalled the particular instance of a man who bought a little plot for about £280 with a forty foot frontage.

He had his building licence and was ready to go ahead, and he could have had a house in which to live within three or four months but he was deterred from proceeding in the matter because he would have to pay a development charge of £384, which was about 130 *per cent.* of the cost of the land he had acquired. Because he could not afford to pay the charge the house would never be built.

In replying on behalf of the Government the Parliamentary Secretary to the Ministry of Housing and Local Government (Mr. Ernest Marples) was forthright in agreeing at the outset that there were many hardships amounting to almost an injustice in the levying of the development charge. He did not dispute that. They started on the basis that the Government accepted that as a fact.

The Minister suggested that it was desirable to look at the Town and Country Planning Act in perspective and as a whole. It was an enormous piece of legislation with many sections and so many pages that it was almost baffling to look through it. But as a whole it had been an invaluable measure. Its structure had been accepted and welcomed because fifty million people living in an extremely small island must make some provision for agricultural land and mineral rights, and future living conditions in some of our crowded industrial centres must be safeguarded by learning the lessons of the past and applying them to development in the future. The Government intended that the weaknesses of the Act should be remedied without sacrificing its advantages or saddling the nation with an unending bill of charges.

The Government were desperately keen to remedy the injustices arising under the Act and had gone with unflagging zeal into the various possible solutions. It was only too easy to see where the Act was not working but extremely difficult to find a solution which was the perfect solution. But they were hopeful that they would, at all events, be able to improve on the present position. There was unanimity in arguing that parts of the Act were bad but no two professional bodies agreed as to the remedies which should be applied.

The Government would seriously consider (in fact they had already deeply considered) the possibility of using the powers of s. 12 (2) (*f*) of the Act under which an order can be made by the Minister to specify the class of use which does not attract a development charge. They would also pay deep attention to s. 69 (2) (*b*), which enables regulations to be made with the consent of the Treasury, which provide for exemption from development charge. The Government recognized that the criticisms made of the Act in the debate were valid and would do their best to overcome them but the Parliamentary time-table was so choked with business that it would obviously not be possible to introduce any measure until the next Session.

BRITISH PROPERTY RIGHTS AND INTERESTS IN JAPAN

Britisher owners of property in Japan are informed that provision is made in the Treaty of Peace with Japan for the return to its owners of the property of each Allied Power and its nationals which was in Japan at any time between December 7, 1941 and September 2, 1945. Where property has not yet been returned, or where the owner has not yet accepted the return of his property, application for its return must be made to the Japanese Government within nine months of the date of coming into force of the Treaty, that is before January 28, 1953.

The Treaty also provides for compensation in respect of loss of or damage to Allied Powers' property which was within Japan on December 7, 1941. To give effect to this provision of the Treaty, the Japanese Government have promulgated a special law, the Allied Powers Property Compensation Law. Under this law property owners must, if they have not already done so, make application, within nine months of the coming into force of the Treaty, for the return of their property, which would entail the acceptance of any damaged property which is returnable in its present state, if they wish to make a claim for compensation for loss or damage. Claims for compensation must be lodged with the Japanese Government within eighteen months of the coming into force of the Peace Treaty, *i.e.*, before October 28, 1953.

It has been arranged that applications for return of property and compensation claims are to be made to the Japanese Government through the Government of each Allied Power. Her Majesty's Government are, therefore, making arrangements for the presentation of applications for return and of compensation claims of British subjects.

Property which may be the subject of a claim includes movable and immovable property, bank balances or debts which have been paid into the Special Property Administration Account in the Bank of Japan, but does *not* include monetary credits or debts which have not been so paid.

British subjects in the United Kingdom who have registered interests in Japan within the description above with the Administration of Enemy Property Department (formerly the Trading with the Enemy Department) will shortly receive advice on the matter from that Department.

British subjects who have *not* registered such interests in Japan with the Department should apply at once for advice to the Controller General, Administration of Enemy Property Department, Lacon House, Theobalds Road, London, W.C.1.

REPORTING OF PROPERTY OF JAPANESE RESIDENT IN NEUTRAL COUNTRIES

The Japanese Treaty of Peace Order, 1952 (S.I., 1952, No. 862) provides for the collection and realization of Japanese property in accordance with art. 14 of the Treaty of Peace with Japan, which gives to the United Kingdom the right to seize Japanese property, rights and interests (with certain exceptions) within its jurisdiction.

The Board of Trade have released from the provisions of the Order the property, rights and interests in the United Kingdom of individuals of Japanese nationality who from the beginning of the War with Japan up till the date of the coming into force of the Peace Treaty (that is between December 7, 1941, and April 28, 1952) were continuously resident in territory which has at no time been enemy territory, other than property, rights or interests which have at any time been subject to an Order made by the Board of Trade under Section 7 of the Trading with the Enemy Act, 1939.

This action is given effect by a Direction to Release made by the Board of Trade on June 28, 1952.

ROAD ACCIDENTS—MAY, 1952

Ninety-two fewer people were killed on the roads in May than in the same month last year, but the number of those injured increased by 677. The total of killed and injured was 19,018 (as compared with 18,433 in May, 1951), including 352 killed, 4,452 seriously injured, and 14,214 slightly injured.

Compared with May, 1951, the most disturbing feature was an increase of 940 in the casualties to pedal cyclists. These totalled 5,312 or about twenty-eight *per cent.* of all the casualties. The number of cyclists killed, fifty-five, was, however, eleven less than in May, 1951. Motor cyclist casualties increased by 293 to 3,175, but in this group also deaths were fewer—ninety, compared with 102 in May, 1951.

Casualties to adult pedestrians numbered 2,264, of which seventy-three were fatal. Compared with May, 1951, the figures show a decrease of 197 in the total and of thirty-nine in the killed. There was, however, a small increase in casualties to child pedestrians. These numbered 2,455, including fifty-eight killed, making a total for pedestrians of all ages of 4,719. Casualties to drivers, other than motor cyclists, fell by 164 to 1,453, of which twenty-one were fatal.

Figures for the first five months of the year show that there were 1,875 fewer casualties to pedestrians than in the same period of 1951.

DISTRIBUTION OF GERMAN ENEMY PROPERTY CLAIMS PROCEDURE FOR NON REICH STERLING BONDS

The Distribution of German Enemy Property Act, 1952, which became law on June 26, modifies the statutory conditions governing claims in respect of the following German " non Reich " sterling bonds, *viz.* :

Enfaced bonds of the City of Saarbruecken six *per cent.* Sterling Loan of 1928.

Any bonds of the :

Potash Syndicate of Germany twenty-five year Sinking Fund Gold Loan.

City of Berlin six *per cent.* Sterling Loan, 1927.

City of Cologne six *per cent.* Sterling Loan, 1928.

City of Dresden 5½ *per cent.* Sterling Loan of 1927.

City of Munich six *per cent.* Sterling Bonds.

State of Hamburg six *per cent.* Sterling Loan of 1926.

Hamburg Waterworks six *per cent.* Sterling Loan.

The Free State of Saxony six *per cent.* twenty-five year Sterling Bonds of 1927.

Province of Westphalia seven *per cent* Sterling Loan of 1926.

Prussian Electric Company six *per cent.* twenty-five year Sterling Bonds.

The Act removes the former condition requiring British ownership of these bonds at September 3, 1939, to be established additionally to the requirement of British ownership at November 7, 1951.

The administrator of German Enemy Property is now authorized to accept claims on this basis in respect of German enemy debts arising out of the bonds listed above; these claims should be made on Part I of Form D.G.E.P.C.

He is also now authorized to accept claims arising out of *Unenfaced* bonds of the Germany External Loan 1924 (Dawes) German Government International 5½ *per cent.* Loan, 1930 (Young) and City of Saarbruecken six *per cent.* Sterling Loan of 1928; these claims should be made on Part II of Form D.G.E.P.C. Claims arising out of these bonds will only rank in the distribution if the bonds were in British ownership at September 3, 1939, as well as at November 7, 1951.

Claim forms can be obtained, on application, from the Administrator of German Enemy Property, Branch X, Lacon House, Theobalds Road, London, W.C.1. Persons who have already applied for forms should receive them within a week. Claims must be made to the Administrator by October 31, 1952.

REVIEWS

Halsbury's Statutory Instruments, Volumes 6 and 7. London: Butterworth & Co. (Publishers) Ltd. Price 29s. each net per volume. Service £4 4s. a year.

We have noticed the earlier volumes of *Halsbury's Statutory Instruments* as they appeared. With the sixth and seventh volumes now before us, taking the titles up to the letter E, the work may be considered firmly established. We imagine that few busy practitioners would now be willing to do without it.

Volume 6 begins with 137 pages devoted to criminal law. Speaking generally, one does not associate criminal law with development by statutory instrument, since ordinarily Parliament has preferred to keep in its own hands the creation of criminal offences and the appointing of their penalties. The presence in the volume of a title of this length is a reminder that even the criminal lawyer cannot afford to neglect the work. The title begins with cases where the jurisdiction to be exercised is wholly English. It proceeds to treat of extradition, fugitive offenders, and official secrets. It is particularly useful to those concerned to have, here, the list of countries to which the Fugitive Offenders Act, 1881, has been extended since this is a matter which is often in doubt. The title indicates whether the Act has been applied, and subject to what conditions, and shows (for example) the extra territorial jurisdiction existing by virtue of British orders in council in certain non-British territories.

Another title in the same volume, which is more important to many of our own readers, contains the statutory instruments on the subject of Distress, with cross-references to a number upon allied matters.

In "Dominions and Dependencies" there should be noticed, particularly, the pages dealing with foreign jurisdiction orders. There is here an important explanation of the manner in which different statutory instruments apply to Dominions and Dependencies, with special reference to historical developments. This is followed by a chronological list of instruments affecting (or formerly affecting) India and Ireland, with a column for "remarks" showing what has happened to these provisions. This title, as a whole, illustrates very happily the extraordinary versatility of the Privy Council, as a legislative organ in the modern world. We doubt whether any person (even in the legal profession) would have realized this unless brought into contact with overseas constitutional practice.

The title on "Ecclesiastical Law" is outside the purview of most of our readers, but contains several interesting and peculiar provisions.

The title Education is one affecting many of our readers. It runs nearly to one hundred pages, reflecting the activities of the Minister of Education, in particular. It is in a topic of this sort that one aspect of the importance of such a work as this is seen. There are few provisions in the statutes relating to Education, which do not depend in some degree upon statutory instruments, and it is all too easy to overlook the latter when confronted with a legal problem, unless one has the work like this at hand.

Volume 7 begins with the voluminous title "Elections," which is a matter of practical moment to many persons in local government. Amongst other things, this title gives the House of Commons Redistribution of Seats Orders under the Act of 1949, and the Election Rules which have been changed a good deal from time to time.

The title "Electricity" is again voluminous, and contains a useful table (covering several pages) of the applicable instruments, together with a preliminary note or historical introduction, showing how the new law since nationalization dovetails into the old.

Sixty pages devoted to the topic of "Employment" cover such matters as wages councils, catering wages, dock workers, and checkweighing, with copious cross-references to other titles of the work. The presence here of some twenty pages of instruments stemming from the Defence Regulations is a reminder that these are still with us, and have been used for internal administrative purposes where successive governments thought fit. "Estate Duty" is another fairly voluminous title, logically linked with "Executors and Administrators," for whom also many statutory instruments have been made.

In addition to the titles in which the main topics are fully dealt with (so far as statutory instruments are concerned) there are a number of others which consist of a printed heading in its proper alphabetical place, with cross-references to other parts of the work.

The work, as a whole, shows promise of living up to the intention with which it was begun, of its being a companion volume, to be regularly used with *Halsbury's Laws* and *Halsbury's Statutes*. It is certain that without guidance from such a work as this the lawyer might find himself badly at sea in many of the topics upon which the subordinate or prerogative legislation is collected here.

The Blind Eye of History, a study of the origins of the present Police Era. By Charles Reith. London: Faber and Faber, Ltd. Price 18s. net.

In earlier works Mr. Reith has emphasized the importance of the British police system as a notable contribution to civilization and true democracy. In this further treatise he enlarges upon this theme, and accuses historians of having neglected or overlooked its importance. It may be rather startling to hear the suggestion that this country might not have lost her American colonies if she had had the right kind of police, but Mr. Reith never makes wild statements unsupported by facts, and even those readers who do not go all the way with him will be forced to admit that he produces some cogent facts and persuasive arguments. He has evidently read widely and to considerable purpose as his references to history, both ancient and modern, suffice to show.

In his introduction he makes a statement which subsequent chapters go far to prove, astonishing as it may be. "More communities have perished by their inability to enforce laws than have been destroyed by nature or hostile aggression." At the end of his book having traced the history of police ideas and systems from the earliest times to the present day he writes: "It is essential to see clearly that the menace from which the world suffers today is not that of Communism. Nor is it the clash of two opposing ideologies. It is, simply and fundamentally, a clash between two opposing police systems of enforcing laws; the Kin Police, or Democratic system, and that of Ruler-appointed, Totalitarian Police."

These two systems and their working throughout the centuries are the subject of the book. Both forms can be traced to early times and both, says the author, can be seen today in their primitive form in village communities in Asia and in tribal communities in Africa and in the Pacific Islands.

Kin Police, a system under which men were responsible for the good behaviour of a family or clan, developed into frank pledge and at a much later date into the modern police system under which a number of local police forces are trained and paid to do what is recognized as in reality the duty of every citizen. Ruler-appointed police have existed also from early times and are today exemplified most strikingly in the police systems of totalitarian states. Each system passed through various vicissitudes, and each worked well during some periods and not so well during others. Thus the Ruler-appointed police system seems to have been excellent under Charlemagne, but this Mr. Reith attributes to the personality and influence of the ruler himself. On the other hand, the Kin Police system, which gave rise to the appointment of parish constables, broke down badly.

There is a certain amount of criticism of the system of administering justice in the United States, and some curious examples are given of the methods of some judges in relation to probation and prison methods. The remedy for their defects, it is suggested lies in the reform of the police system. It is rather remarkable that there should be some 40,000 separate forces, many consisting of only one or two men, but in fairness it must be added that some forces are well organized and highly efficient.

Mr. Reith makes his position abundantly clear by stating and explaining nine principles which are the basis of the modern British Police Institution, and in which he finds the explanation of all that is of special value. These are worth enumerating, as they are to some extent the key to the problem so admirably dealt with in this remarkable book. Here they are:

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.

2. To recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence,

actions and behaviour, and on their ability to secure and maintain public respect.

3. To recognize always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of law.

4. To recognize always that the extent to which the co-operation of the public can be secured diminishes proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.

5. To seek and preserve public favour not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to Law, in complete independence of policy and without regard to the justice or injustice of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth and social standing; by ready exercise of courtesy and good humour; and by ready offering of individual sacrifice in protecting and preserving life.

6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.

8. To recognize always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.

9. To recognize always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 65.

ALLEGED OBSTRUCTION OF A FOOD INSPECTOR—AN ACQUITTAL

A local butcher and his two assistants were jointly charged at Llanelly Magistrates' Court on June 11, 1952, with wilfully obstructing an enforcement officer employed by the Ministry of Food, from performing the duties conferred upon him by reg. 55AA of the Defence (General) Regulations, 1939, contrary to reg. 83 of the said Regulations and the Emergency Powers (Defence) Act, 1939.

For the prosecution, evidence was given that the butcher had refused to allow a food inspector to enter a van belonging to him which was standing on the highway outside his premises. The two assistants of the butcher had participated in the affair, and had been involved in a struggle with the inspector.

Mr. Lionel Benjamin, solicitor, of Swansea, who represented the three defendants and to whom the writer is greatly indebted for this report, suggested that the inspector had displayed a tendency that was common to all men who were given power—a tendency to "pinch a little bit more." Mr. Benjamin submitted that the inspector had no right to inspect the contents of the van in the absence of consent by the butcher, and he drew attention to the provisions of reg. 55AA (2) under which the enforcement officer was purporting to act. Mr. Benjamin pointed out that under para. 3 of the Regulation, power is given to an inspector, on production of the warrant issued to him "to enter any premises used or appropriated for the purposes of any undertaking to which the warrant relates and to inspect such premises and any articles found therein . . ." Mr. Benjamin next drew attention to the last few words of para. 6 of the regulation which provide that any reference in the regulation to "articles" shall be construed as including a reference to substances, vehicles, vessels and animals.

Mr. Benjamin submitted that the defendants had no case to answer on the ground that whilst the regulations empowered inspectors to enter premises used for the purposes of (*inter alia*) a food undertaking, and to inspect any vehicle found therein the warrant did not, and could not, validly empower them to inspect vehicles found anywhere except on premises used as a food undertaking, and it was clearly established from the evidence that the food officers had not, in fact, entered the defendant butcher's premises at all, and that the van was standing on the highway outside the premises.

The prosecution submitted that the word "premises" in para. 3 of reg. 55AA (*see* above) included vehicles and that on this ground the inspector's action was covered by the regulations. Mr. Benjamin, in reply, urged that the prosecution's submission should be rejected, and called in aid the provisions of reg. 88A, which clearly differentiate between "premises" on the one hand, and "vehicles" on the other; he also drew attention to the normal meaning of the word "premises."

The magistrates accepted Mr. Benjamin's contentions, and all the defendants were acquitted.

No. 66.

A COMPANY DIRECTOR IS FINED £500

AB and CD, directors of a named company, were charged at Marlborough Street Magistrates' Court on March 24, 1952, with permitting default to be made by the company in keeping proper books of account throughout the period of two years immediately preceding the commencement of the winding up of the company on March 8, 1951, contrary to s. 331 of the Companies Act, 1948.

Evidence was given for the prosecution by an official of the Registrar of Companies, who produced the file relating to the company. The date of incorporation was January, 1945; the defendants and a third man were shown as directors on the latest return and the authorized and subscribed capital was £100.

The company's bank accounts with three well-known banks were produced, and a woman employed up to 1951 as cashier by the company gave evidence that the company, through the defendant director AB, ran a club in London; AB gave all necessary orders, and the defendant CD was secretary and book-keeper. The witness stated that she kept a duplicate book in which records of any money handed to her by visitors to the club were recorded, and in addition a slip was made out showing each night's total receipts. The money was sometimes put through the letterbox of AB's flat, and on other occasions it was collected later by an employee of the club. Witness stated that she was employed at the club from April, 1945, until May, 1950. The nightly takings up to March, 1950, were approximately £150—£250, and a good deal of this money was taken in cheques, but witness stated she did not know how many of these were not met.

An audit clerk employed by a firm of accountants stated that between March, 1949, and March, 1951, the books of the company were kept at his firm's office on account of a lien in respect of unpaid fees. No entries relating to that period were made during that time.

A chartered accountant employed by the same firm, stated that he had told AB in November, 1950, that the company's books were not being written up by his firm.

An incorporated accountant was the next witness for the prosecution, and he stated that he examined the records of the company in August, 1950, and found that they were inadequate, and that he had told the defendants the ways in which he thought the records were not full and complete. An examiner in the department of the Official Receiver who was concerned in the liquidation of the company, produced a number of exhibits, and stated that he had calculated a rough figure for the deficiency of the company at £36,000 and that, having examined the books and records of the company, he could not account for the loss. AB had told him that the club owed him some £6,000, but there were no figures in the books of the club to show whether or not that was true.

On March 31, 1952, defendants appeared again at Marlborough Street Magistrates' Court, and were then committed for trial. Later, notices were served upon them of considerable additional evidence to be given by the prosecution at the trial detailing the manner in which the company's books were not properly kept. In particular during the two years immediately preceding the winding up of the company, cash cheques amounting in value to £32,555 were drawn on the company's accounts, but none of the company's books contained entries dealing in detail with what happened to these withdrawals of cash.

On July 10, 1952, AB pleaded guilty at London Sessions to the charge and was fined £500 and ordered to pay £52 10s. costs. He was given one month to pay and sentenced to six months' imprisonment in default of payment. CD was stated to be too ill at present to stand his trial.

COMMENT

Section 331 of the Companies Act, 1948, provides that if, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every officer of the company who is in default shall, unless he shows that

he acted honestly and, that in the circumstances in which the business of the company was carried on, the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year.

Subsection 2 of the section specifies the circumstances under which it shall be deemed that proper books of account have not been kept.

(The writer is indebted to Mr. C. Leo Burgess, C.B.E., Clerk of the Peace for the County of London, for information in regard to this case.)

PENALTIES

Bristol Juvenile Court—June, 1952—stealing cigarettes, chocolate and tobacco value £2 4*s.* from a shop—approved school. The boy was placed on probation for two years at another court the day before he committed this offence.

Oldbury—June, 1952—driving without due care and attention (two defendants)—first defendant fined £3. To pay 10*s.* costs. Second defendant fined £5. To pay 10*s.* costs. First defendant, with thirty-four years' driving experience, drove a van towards a cross-roads. Second defendant, with five and a half years' experience, drove a car towards the same cross-roads. Neither defendant slowed down nor would give way to the other and a collision occurred.

Oldbury—June, 1952—using a lorry without paying the appropriate rate of duty—fined £5. A goods lorry was used to draw a caravan from the manufacturers' premises.

Bristol—June, 1952—obtaining £2 17*s.* from the National Assistance Board by false pretences—four months' imprisonment. Defendant a man of thirty-one with a previous conviction for theft, asked for three similar offences involving £4 to be taken into consideration. Defendant gave interviewing officer false information and false addresses.

THE LONG ARM OF THE LAW

By W. E. LISLE BENTHAM

As Emerson wrote: "Law it is which is without name, or colour, or hands, or feet; which is smallest of the least, and largest of the large; all, and knowing all things; which hears without ears, sees without eyes, moves without feet, and seizes without hands." Little do we realize as we go about our daily lives how much the law touches us all upon every side and how impossible it is for any of us to escape its contact.

Consider the case of the average business man as he leaps out of bed at the sound of his alarm on a bright June morning. Does he reflect for a moment upon the fact that, but for William Willet and the Summer Time Acts, 1922-1947, he might still have been sleeping peacefully for another hour? No, he has forgotten all about that since the publication of the latest daylight saving order way back in March. As he dashes for the bathroom and turns on the tap, does he give thanks to the Waterworks Clauses Acts, 1847 and 1863, for the abundant supply of steaming liquid which (sometimes) emerges? Conceivably, as his foot makes contact with the supposedly tepid fluid, he is much more likely to indulge in his favourite expletive which, if uttered in the presence of a police constable, might well render him liable to arrest under the provisions of s. 3 of the Profane Oaths Act, 1745. Having reduced the temperature of the bath, he plunges in without a great deal of consideration to the principle of *Rylands* v. *Fletcher* (1868) 33 J.P. 70, as the water overflows and penetrates into the room below. Soon, as he dries himself, he is doing violent injustice to "Yes, let me like a soldier fall" or some other such stirring *magnum opus*, regardless of the public nuisance to the neighbourhood he is creating as his reverberant tones issue forth through the open window. Then, with studied negligence he dresses and, ignoring the law of gravity, in due course descends the stairs somewhat abruptly in order to break his fast, and incidentally the glass of his wrist watch. He samples some bacon and eggs placed under his nose (but not under the Food and Drugs Act, 1938). He devours his toast and marmalade, without a thought to the repeal of the Corn Laws in 1846, particularly as he never was good at history. He gulps down his cup of tea, entirely unconcerned as to whether the particular brand may offend against the Merchandise Marks Acts, 1887 to 1926. Meanwhile he scans his newspaper for a juicy piece of scandal—in vain, for the editor knows more than he about the intricacies of libel. If feeling in a generous mood, he gives his wife a fiver on account of housekeeping. She, of course, is quite unaware, poor soul, that she is merely a trustee of the money, for she has never heard of *Hoddinott* v. *Hoddinott* (1949) 65 T.L.R. 266, and she will in any case probably spend the lot on the purchase of a new hat. If she is handed a receipted account for it, she will scarcely bother her head about s. 1, sch. 1 of the Stamp Act, 1891. But the time has now come for her husband to set out for the office, for at least he knows that he must work for his bread so that he may have bread for his work. As he jumps on his bus, however, he has not the faintest idea that he is in fact accepting an offer and so making a binding contract with the transport undertaking.

During business hours, our hero is like a veritable virago, driving himself and his staff in the pursuit of gain as if there was no such thing as a statute of limitations. Unmindful of the laws of nature, which Longfellow tells us are just, but terrible, he is intent on expounding in a practical way the principles embodied in the Sale of Goods Act, 1893, although, as he hurriedly subscribes his name to one of the many letters he has so speedily dictated, it probably does not cross his mind that he may be creating "a note or memorandum in writing signed by the party to be charged or his agent in that behalf." Nor does he regard the cheque he signs as a "a bill of exchange drawn on a banker," but, after crossing it "not negotiable," he is careful also to mark it "& Co.," though he might have saved himself the trouble had he known that such latter marking is of no legal effect and a mere survival of the customary courtesy in the days when all banks were private firms. It would now be far more apt to write "Ltd."

Lunch is a perfunctory affair, but refreshing in spite of the restrictions of the Licensing (Consolidation) Act, 1910. Then, back to the grindstone again, making full use of the facilities afforded by the Post Office and Telegraph Acts, and no doubt wrestling with those portions of the Finance Acts which relate to income tax, surtax, profits tax and purchase tax. Small wonder he is tired when at last he arrives home again in the evening. After dining, however, he may decide that a short stroll will do him good. His wanderings bring him to a railway embankment, the fence of which he climbs heedless of the board informing him that "trespassers will be prosecuted." Like a naughty schoolboy, he derives much satisfaction in doing that which is forbidden by what he has heard described as "a wooden lie." Being completely unacquainted with s. 16 of the Railway Regulation Act, 1840, he is even rather abusive to the irate official who suddenly appears apparently from nowhere. After a heated discussion, he resolutely refuses to return by that same way by which he came, and deep is his chagrin at finding himself seized, detained and hailed next morning before the justices of the peace, who promptly relieve him of the sum of forty shillings, adding fuel to his flame by remarking that, if he does it again, they will fine him the maximum.

Such facetious illustration may serve to demonstrate the fashion in which the law often makes us aware of its proximity and, therefore, it behoves us to take all reasonable precautions to avoid its pitfalls. Much as some of us may dislike them, lawyers

are accordingly an obvious necessity, if only, as the proverb says, to keep us out of the law. The layman needs their constant advice and guidance, just as he needs his doctor and his clergyman or priest; otherwise he is like the man who fell out of the balloon, not in it; and especially is this so in this complicated modern age with its steady flow of new statutes, with their lengthy titles, and orders and regulations and mass of legal decisions thereunder. Even a lawyer may be excused for being taken aback when faced with the interpretation of a section such as this from the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951:

> "16.—(1) Subject to subsection (2) of section fourteen of this Act, if at any time during a service man's period of residence protection—
>
> (*a*) a tenancy qualifying for protection ends without being continued or renewed by agreement (whether on the same or different terms and conditions) and
>
> (*b*) by reason only of such circumstances as are mentioned in the next succeeding subsection no statutory tenancy arises (apart from the provisions of this section) on the ending of the tenancy qualifying for protection,
>
> the Rent Restrictions Acts shall during the remainder of the period of protection apply in relation to the rented family residence as if those circumstances did not exist, and had not existed immediately before the ending of that tenancy, but shall so apply subject to the modifications provided for by this section as to standard rent."

This is the language which the service man is supposed to comprehend, but which one ventures to think might well make many of our former legal luminaries turn in their graves. It was Seneca, the renowned Roman philosopher and dramatist, who said: "A law ought to be short, that it may be the more easily understood by the unlearned," but unfortunately the trend of the parliamentary draughtsman is now towards long and involved sentences and—the greatest of all evils—legislation by reference, which has for long been condemned by Her Majesty's judges and of which the Rent Acts themselves are a peculiarly glaring example. The trouble is firstly, that complication leads to further complication and so, like a rolling stone, the statute book gathers more and more verbiage and soon becomes unwieldly; secondly, that the parliamentary machine is now so overburdened with work that Bills do not receive sufficient consideration in their passage through the House; and thirdly, so abstruse are some of their provisions, that such amendments as are made in Committee often render it even more difficult to construe the meaning and intent of the final result.

The law is made for man, not man for the law, and should accordingly be as simple and direct as possible. Said Carlyle: "Laws are not our life, only the house wherein our life is led; nay, they are but the bare walls of the house; all whose essential furniture, the inventions and traditions and daily habits that regulate and support our existence, are the work, not of Dracos and Hampdens, but . . . of philosophers, alchymists, prophets and the long-forgotten train of artists and artisans, who from the first have been jointly teaching us how to think and how to act, how to rule over spiritual and physical nature." The great majority of us are decent, law-abiding citizens and, said Ruskin: "Laws are usually most beneficial in operation on the people who would have most strongly objected to their enactment." An Italian proverb puts it more succinctly: "Laws were made for rogues." Yet, human nature being what it is, we recognize the necessity for some governing control of our habits and inclinations, backed up by legal sanctions as a deterrent to our over-stepping the bounds of propriety; for, wrote Cicero: "We are all servants of the law, that we may be free men."

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

CORPORAL PUNISHMENT

Lt.-Col. D. M. Lipton (Brixton) asked the Secretary of State for the Home Department what proposals to restore flogging he was now considering.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied: "The matter is under constant review, but I must not be taken as assenting to the proposition that the case for restoring corporal punishment either for the offences for which it could formerly be awarded or for a wider range of offences has been established or that this controversial matter is one requiring urgent solution."

Sir T. Moore: "When is this constant review likely to lead to results, especially in view of the growing wave of bestial crimes which are mounting up every day?"

Sir David: "My hon. and gallant Friend makes that statement, but for the good name of the country as a whole it ought to be made clear that the figures of the crimes previously punishable by corporal punishment have not risen but have steadily declined."

PRISONER'S MARRIAGE

Lt.-Col. Lipton asked in what circumstances permission to marry was granted to prisoners before expiry of sentence.

Sir David replied that the temporary release of a prisoner under escort for the purpose of marriage was authorized only when marriage before the prisoner's discharge would prevent his or her child from being born illegitimate.

Lt.-Col. Lipton: "Does that answer mean that in no other circumstances is a prisoner given permission to marry? If so, will the Home Secretary consider extension of the facility in suitable cases where marriage, for a variety of reasons, ought to take place?"

Sir David: "That is a very difficult point and would require very serious consideration before I could go forward. There has been great controversy about the step I have taken, but I think it is the kindest one and I stand by it."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, July 21

Customs and Excise Bill, read 2a.
Pensions (Increase) Bill, read 2a.

Tuesday, July 22

Town Development Bill, read 3a.
Visiting Forces Bill, read 3a.

Wednesday, July 23

Children and Young Persons (Amendment) Bill, read 3a.

Thursday, July 24

Hypnotism Bill, read 3a.
Housing Bill, read 3a.

HOUSE OF COMMONS

Friday, July 25

Prison Bill (Lords), read 3a.
Costs in Criminal Cases Bill (Lords), read 3a.
Insurance Contracts (War Settlement) Bill (Lords), read 2a.

PERSONALIA

OBITUARY

THE LATE MR. A. J. LONG, Q.C.

We announce with great regret the death of Mr. Alfred James Long, Q.C., Recorder of Wolverhampton and Leader of the Oxford Circuit. He was the elder son of an architect of West Bromwich and was educated at King Edward's High School, Birmingham and London University. Before being called to the Bar by Lincoln's Inn and The Inner Temple in 1915 he qualified as a solicitor. He was called whilst on war service.

On demobilization he studied as a pupil of the late Hon. Sir John Coventry and in 1920 became a "local" at Birmingham, practising there until he became a King's Counsel in July, 1938. In due course Long became a Bencher of Lincoln's Inn and on the death of his former school friend the late Mr. W. H. Cartwright Sharp, K.C., he became Leader of the Oxford Circuit: Long was intensely proud of both appointments which he filled with distinction.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate child of married woman—Service of notice on her husband.*

I am much interested in the reply to P.P. No. 1 at p. 174, *ante*, in which you say that in the circumstances therein mentioned both D and E must have notice.

Surely the date of the hearing is the important time to show that all persons who should have had notice have had notice. Now the question states that at the hearing rebuttable evidence will be given that E is not the father, and the court must then hold that as E is not the father it was unnecessary that he should have had notice.

Have I overlooked something? SETO.

Answer.

We do not suggest that our learned correspondent has overlooked anything: it is simply that his opinion evidently differs from ours. There has always been some divergence of opinion and practice, but we have taken the view that where a child is by law presumed legitimate the husband of the mother must be served with notice. We consider that when the date of hearing is fixed and the notices are issued, the position at that date should determine the persons upon whom notice is to be served. The fact that it is proposed to call evidence at the hearing to rebut the presumption of legitimacy does not, in our opinion, make it unnecessary to serve notice upon a person whose consent is presumably required, even though evidence may subsequently show that such consent is not required.

2.—Criminal Law—*Continuing offence.*

A byelaw of X harbour provides as follows:

"No master of a vessel or other person being responsible for, or having, or undertaking the charge or control of any goods, things or thing, shall deposit the same or cause or allow the same to be, or remain deposited, upon any pier, quay, jetty, or other place within the limits of the harbour for any period longer than twenty-four hours except with the previous consent of the harbour master, or in any such manner or position as shall obstruct or interfere with or tend to obstruct or interfere with the traffic or business of the harbour or shall be contrary to any reasonable direction or request of the harbour master. Every person who shall commit any breach of this byelaw shall be liable for every such breach to a penalty of £5."

In February last the owner of the cast iron keel of a vessel recently broken up in the harbour was prosecuted for allowing such keel to remain upon the bed of the harbour after being requested by the harbour master to remove it and was fined for that offence. The keel is still lying in the harbour and the harbour authority is issuing another summons for the same offence with merely an alteration in the date thereof. It will be observed that the byelaw does not provide for any daily penalty and the question is whether the offence is a continuing one in respect of which a further summons can be issued or whether a plea of *autrefois convict* would apply. EDN.

Answer.

The conviction already obtained was for allowing the keel to remain for more than twenty-four hours before the information resulting in that conviction was laid. In our opinion, the person who has allowed it to remain for a further period exceeding twenty-four hours has committed a fresh offence. Had the byelaw made the depositing alone an offence, the case would have been otherwise, for the act of depositing is a single act.

3.—Housing Act, 1936—*Notice under s. 9 requiring repairs—Person having control.*

A, a farmer, rents at a rent of £10 per annum, paying rates in addition, a cottage owned by B, with rateable value of £4. B is not the owner of the farm. The cottage is occupied by C, in the employ of A, on a service tenancy, 6*s.* per week being deducted from his wages by A. A pays the rent of the cottage to D a firm of estate agents who act as rent collectors for B. A is liable under his agreement to keep the windows and inside of the cottage and premises in good repair. The former owner accepted this as applying only to internal decorations and actually undertook all other repairs. It is necessary to serve a notice under s. 9 of the Housing Act, 1936, requiring the carrying out of extensive inside works of repair to floors, walls, etc. and also for external repairs to chimney and wall.

1. Who is the person having control of the cottage for the purpose of s. 9 of the Housing Act, 1936, on whom the statutory notice should be served?

2. Is the position affected by whether C occupies as statutory tenant or if he holds on a service tenancy while in the employ of A?

FARS.

Answer.

1. Having regard to the definition of "the person having control of the house" in s. 9 (4) of the Act, the statutory notice should be served on B's agents who collect the rent for him and so receive it on his account.

2. C's status as a tenant (statutory, service, or otherwise) does not affects this.

4.—Licensing—*Special removal—Whether applicant must be licence-holder at the time of giving notice of application.*

A is the holder of a justices' licence in respect of premises X. At the annual licensing sessions held on February 6, A successfully applied for a renewal of this licence. Some weeks previously he had sold the licence to B in consideration of a sum of money, on the understanding that the money should be repaid in the event of B not succeeding in obtaining a transfer of the licence and a special removal thereof to premises Y. At the same sessions B, having given notice, applied for a transfer of the licence to him and a special removal thereof to premises Y. The solicitor acting for a person opposing the applications made a preliminary objection on the ground that at the time of giving the notice of application for a special removal B was not the licence holder. It was explained to him that B was also making an application for transfer but he contended that although if the transfer was granted, then at the time of his application for removal immediately afterwards B would be the licence-holder, it was imperative that B should have been the licence holder when he gave notice of his application for removal or that A should have given the notices and obtained the removal, B obtaining a transfer at the same sessions.

The magistrates retired and the chairman announced that the applications would be dealt with at the adjourned sessions on March 5, and that on that date the sessions would be further adjourned if necessary.

I act for A and in a discussion after the sessions the objector's solicitor agreed that A could not apply for a removal as he has no interest in the premises Y. The objector's and B's solicitors and the justices' clerk have agreed that the matter should be dealt with in the following way: B will apply at the adjourned sessions for a transfer to him. If this is granted the sessions will again be adjourned (for a minimum of three weeks to enable B to give notice) and at the adjourned sessions B will apply for a special removal.

I am of the opinion that this method of dealing with the matter is both inconvenient (if the removal is refused A will have to apply for a transfer back to him) and improper (B has no interest in premises X).

I think that B can make both applications at the same sessions and that there was no substance in the objection for the following reasons:

1. Section 3 of the Licensing (Consolidation) Act, 1910, provides "A person intending to apply . . . shall . . . serve notice." Therefore, any person can serve notice, but before applying for the removal he must, of course, be the licence-holder.

2. The objection was based on:

(*a*) *R.* v. *Liverpool JJ.: Ex parte Liverpool Corporation* [1934] 2 K.B. 227. It seems that the note on this decision in the footnote (*a*) to s. 27 of the Act in *Paterson* (1950) confirms that the licence holder can make the application for removal but does not say that he should be the holder at the time of giving notice. (There appears to be a conflict between this footnote and footnote (*a*) to the same section in *Stone* (1950) as to the effect of this case on *R.* v. *Yorkshire W. R. JJ.: Ex parte Shaw* (1898) 1 Q.B. 503.)

(*b*) Form No. 25 (3) in *Paterson* headed "Notice of Application for a new Justices' Licence or the removal of a Justices' Licence." In this precedent AB is the applicant and CD the owner of the premises to which the licence is to be removed, *i.e.*, the applicant is not the owner of the premises who presumably is the transferree of the licence.

On the basis of this it was contended that the licence-holder must first apply for removal and the owner or occupier of the new premises must then obtain the transfer. I think that the words appearing after CD dispose of this argument, as does the first para. of form IV issued by the Secretary of State under the Act in which the words "and authorize *him*, the applicant" appear.

Your views would be appreciated. N. QUAEVENS.

Answer.

It is to be observed that para. (1) of s. 26 of the Licensing (Consolidation) Act, 1910, requires that in the case of an ordinary removal, application shall be made by the person desiring to be the holder of the licence when removed. No similar limitation occurs in respect of a special removal, from which it seems that the expression in proviso (2)

to s. 27 of the Act—" the person making an application "—is intended to be wide enough to include both the person who holds the licence before removal and the person who desires to hold the licence after removal. Section 27 prescribes that the procedure shall be the same as in the case of an application for transfer. The view that notice of application for transfer may be given either by the transferor or transferee has never been challenged: the precedent of notices of applications for a transfer (No. 7 and 7A) in the appendix to *Paterson* support this view.

Again, as was pointed out in *R.* v. *Liverpool JJ.: Ex parte Liverpool Corporation* (1934) 98 J.P. 341, an application for a special removal suggests the possibility that the licensed premises have been rendered unfit for use for business by fire, tempest, or other unforeseen and unavoidable calamity (s. 24 (2) (*b*)): it, therefore, becomes reasonable to make the enactment wider in scope than to require that the licence-holder alone should give notice of application.

On the basis of the arguments set out, we think that the licensing justices are empowered to grant special removal where notice of application was given by B.

5.—Public Health Act, 1936—*Mortuary and post-mortem room—Equipment.*

The borough of N is a non-county borough. As a local authority within the meaning of the Public Health Act, 1936, the council has established a mortuary for the reception of dead bodies before interment under s. 198 of that Act. The medical practitioner whom the borough coroner is in the habit of instructing to undertake post-mortem examinations at this mortuary has complained that there is a serious shortage of suitable receptacles such as screw topped jars in which to place human organs for subsequent examination and analysis. The council are clearly responsible for setting up the mortuary, but the Act is not altogether clear as to whether the power to incur expenditure on the provision of equipment of the type mentioned is implied as an ancillary power. Your esteemed opinion on the following points would be appreciated:

1. Are the borough council legally liable to provide at their own expense any equipment required at the mortuary?

2. In the event of the borough council's not being legally compelled to supply such equipment, have they nevertheless power to incur any expenditure thereon?

3. If the council is not responsible upon whom does the responsibility for providing and paying for the receptacles fall? AFFO.

Answer.

1. We suppose the question relates to a post-mortem room, rather than a mortuary. As the notes in *Lumley* show, the two are different, and there can be a mortuary without a post-mortem room. We do not, however, think that providing a post-mortem room involves the conclusion that they must provide everything required by persons using the room.

2. In our opinion, they have power to provide usual equipment, as ancillary to providing the room.

3. We see no solution except that the medical man must do so, which seems unfair. We think the council should provide these things.

6.—National Assistance Act, 1948—*Ordinary residence.*

An epileptic girl, now aged sixteen years, was admitted in 1945 to a special school at an epileptic colony under arrangements made by the education authority in the county of X where she was then residing with her parents. In June, 1951, the father remarried and moved into the county borough of Y, and the girl has only spent holidays at the new address. It does not appear that the girl can be accommodated at home when responsibility under the Education Act ceases, and consideration is being given to the provision of accommodation under s. 26 of the National Assistance Act, 1948. I shall be glad if you will express an opinion regarding the authority in whose area she is considered to be ordinarily resident. CAVE.

Answer.

Place of residence is a question of fact, and therefore a question on which opinions may differ. The Minister has to decide, and may not agree with us, but we do not regard " residence " as used in any artificial sense. An Eton boy would be spoken of as going home for the holidays, and it would hardly be doubted that his place of residence was with his parents, even though he spent less than half of each year at that place. On the facts given, we should reach the same conclusion here. Such " home " as the girl has is at Y with her father and step-mother; indeed, the query calls this place her home, and this popular (perhaps even inadvertent) phrase in the query seems to us a good guide to the intention of Parliament.

7.—Road Traffic Acts—*Vehicles (Excise) Act 1949—Prosecution by officer of local authority—Local authority must order prosecution in each case—General authority to prosecute not sufficient—Form of summons.*

Does the principle of *Bob Keate, Ltd.* v. *Farrant* (1951) 115 J.P. 304 apply in a summons issued under s. 13 (2) of the Vehicles (Excise) Act, 1949?

The information was laid by AB, local taxation officer of the Blank council, that the defendant did unlawfully use a vehicle as a goods vehicle which brought it into a class of vehicle on which a higher rate of duty was chargeable under sch. 4 of the said Act, such higher rate not being paid before the vehicle was so used.

It is noted that authority to proceed is given to local councils and that they are given the same powers as customs and excise officers. On checking various summonses issued by the customs and excise we see that the information is laid by " Mr. So and So, one of H.M. officers of customs and excise, who prosecutes for His said Majesty on his behalf by order of the commissioners for customs and excise." In the summons in which we are concerned the words for and on behalf of the Blank council do not appear. Is the summons in order? Should AB have received authority from the council to prosecute?

Answer.

The crucial point is that an order from the local authority directing the officer to take proceedings in the particular case is essential, a general direction to take proceedings in all such cases being insufficient: *Jones* v. *Wilson* (1918) 82 J.P. 277. This is based on the wording of the Inland Revenue Act, 1890, s. 21, by which " it shall not be lawful to commence proceedings against any person . . . except by order of the Commissioners and in the name of an officer . . . "

It seems to us that as this information is laid in the name of an officer of the local authority then (provided he is able at the hearing to prove that, in this particular case, he was ordered by the local authority to take the proceedings) he brings himself within *Jones* v. *Wilson*, *supra*. Even if it would be better for the information to state that the officer is proceeding on the order of the local authority, we think that the failure so to state is, at most, a defect in the form of the information covered by the Summary Jurisdiction Act, 1848, s. 1, and that objection to the form of the summons cannot successfully be taken. Upon *Keate* v. *Farrant*, *supra*, and for the general implications to be drawn, *see* article at p. 355, *ante*.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(contd.)*

WARWICKSHIRE COMBINED PROBATION AREA

Appointment of Whole-time Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Female Probation Officer for the Warwickshire Combined Probation Area.

Candidates must not be less than twenty-three nor more than forty years of age, except in the case of a serving whole-time probation officer.

The appointment will be subject to the Probation Rules and the salary will be in accordance with such Rules, subject to deductions for superannuation. The successful applicant will be required to pass a medical examination.

Applications, to be made on forms obtainable from the Shire Hall, Warwick, must reach the undersigned not later than Saturday, August 23, 1952.

L. EDGAR STEPHENS,
Secretary of the Combined Probation Area Committee.

Shire Hall,
Warwick.
July 16, 1952.

CITY OF WORCESTER

Assistant Solicitor

APPLICATIONS are invited from Solicitors for the above appointment at a salary in accordance with the Scales of Salaries of the National Joint Council (Grades Va—VII according to experience).

The post is superannuable and the successful candidate will be required to pass a medical examination.

Applications, giving particulars of age, qualifications and experience, and the names and addresses of three referees, should reach me not later than August 16, 1952.

The appointment will be subject to one month's notice.

BERTRAM WEBSTER,
Town Clerk.

Guildhall,
Worcester.
July 21, 1952.

CITY OF WORCESTER

Appointment of Deputy Town Clerk and Deputy Clerk of the Peace

APPLICATIONS are invited for the appointment of Deputy Town Clerk from solicitors having local government experience. The successful applicant will be required to act as deputy Clerk of the Peace.

The inclusive salary will be £1,300 per annum, rising by two annual increments of £66 13*s.* 4*d.* and one annual increment of £33 6*s.* 8*d.*, to £1,466 13*s.* 4*d.* per annum.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and a satisfactory medical examination, and will be determinable by two months' notice.

Applications, giving full details of experience and present and previous appointments, together with the names of three persons to whom reference may be made, must reach me by August 16, 1952.

BERTRAM WEBSTER.
Town Clerk.

Guildhall,
Worcester.
July 21, 1952.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

CITY OF COVENTRY

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited from persons who have experience and/or training as a probation officer or social welfare worker for the above appointment.

Candidates must be not less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary in accordance with the scales prescribed by those Rules. The salary will be subject to superannuation deductions and the successful applicant will be required to undergo a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned no later than August 16 next.

R. L. BARLOW,
Deputy Clerk to the City Justices.

St. Mary's Hall,
Coventry.

COUNTY OF DEVON

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer for the county of Devon.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949-1952, and the salary will be in accordance with the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination and must be prepared to reside where required by the Committee. The ownership of a motor-car will be desirable but not essential.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than August 22, 1952.

H. G. GODSALL,
Secretary of the Probation Committee.

The Castle,
Exeter.
July 21, 1952.

CITY OF LEICESTER

Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with A.P.T. Grade VII (£710-£785) of the National Scheme of Conditions of Service.

The appointment is subject to the Local Government Superannuation Act, 1937, to a medical examination, and is terminable by one month's notice.

Applications, to be sent to the undersigned with copies of two recent testimonials, and endorsed "Assistant Solicitor," on or before August 28, 1952.

KENNETH GOODACRE,
Town Clerk.

Town Hall,
Leicester.

Corrected advertisement

BOROUGH OF SOUTHGATE

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. Salary, according to experience and date of admission, within A.P.T. VI/VII (£645—£760 per annum) plus the appropriate "London Weighting" allowance.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms, obtainable from the undersigned to whom they should be returned, with the names of two referees, and endorsed "Appointment of Second Assistant Solicitor." Closing date August 30, 1952. Canvassing will disqualify.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green,
London, N.13.

WEDNESFIELD URBAN DISTRICT COUNCIL

Engineer and Surveyor's Department

Appointment of Temporary Engineering Assistant

APPLICATIONS are invited for the appointment of a Temporary Engineering Assistant at a salary within A.P.T. Grades II-IV inclusive, according to experience and qualifications.

Applicants should have a general knowledge of Municipal Engineering, and preference will be given to the applicant holding the Intermediate Examination Certificate of the Institute Municipal Engineers.

The appointment is subject to the National Joint Council's Scheme of Conditions of Service, and to the Local Government Superannuation Act, 1937, and to one month's notice on either side.

The appointment will continue for at least two years with a possibility of permanency.

Applications, stating age, qualifications, previous appointments and details of experience, together with the names and addresses of two referees, must reach the undersigned not later than August 17, 1952.

W. G. MORGAN,
Clerk of the Council.

Council Offices, High Street,
Wednesfield, Staffs.
July 29, 1952.

DURHAM COUNTY COMBINED AREA PROBATION COMMITTEE

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Female Probation Officer for the Sunderland area of the above county.

Applicants must not be less than 23 years nor more than 40 years of age except in the case of serving officers.

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, together with names and addresses of two referees, should be received by the undersigned not later than August 19, 1952.

J. K. HOPE,
Secretary to the Probation Committee.

Shire Hall,
Durham.
July 23, 1952.

Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, August 2, 1952. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.